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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Third and Fourth periodic reports of States parties due in 1990 and 1995 respectively*

Addendum

TRINIDAD AND TOBAGO

[15 September 1999]

* The Human Rights Committee will decide at its sixty-eighth session whether to accept the third and fourth periodic reports as a single submission.

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Introduction

1. In observance of article 40 of the International Covenant on Civil and Political Rights, the Republic of Trinidad and Tobago hereby submits its third and fourth periodic reports to the Human Rights Committee.

2. Trinidad and Tobago ratified the Covenant on 21 December 1978 and, in recognition of its obligations under the Covenant, has worked towards the implementation of proposals aimed at facilitating the rights enshrined in this Covenant.

I. GENERAL

3. Trinidad and Tobago is a sovereign democratic State founded on the rule of law, a principle expressly mentioned in the Preamble to the Constitution. Trinidad and Tobago achieved full independence from the United Kingdom of Great Britain and Northern Ireland on 31 August 1962 and became a republic within the Commonwealth in 1976. The people of Trinidad and Tobago expressing their will through their elected representatives are sovereign.

4. In 1976, Trinidad and Tobago's independence Constitution was replaced with a Republican Constitution. This Constitution declares that it is the supreme law of Trinidad and Tobago and any other law that is inconsistent with this Constitution is void to the extent of the inconsistency. The Constitution is rooted in the separation of powers of the three branches of government, namely the executive, the legislature and the judiciary.

5. The Executive Authority of Trinidad and Tobago is vested in the President and, subject to the Constitution, may be exercised either directly or through officers subordinate to him. The President is elected by all the members of a bicameral Parliament. In the exercise of his functions under the Constitution, the President is required to act in accordance with the advice of the Cabinet except where otherwise stated by the Constitution. The Prime Minister, who is leader of the majority party in Parliament, is the Head of Government. The Cabinet consists of the Prime Minister, the Attorney General and other ministers of government appointed by the Prime Minister from among the members of Parliament. The Constitution vests the Cabinet with the general direction and control of the Government of Trinidad and Tobago and makes Cabinet collectively responsible to Parliament. The Cabinet can be removed from office by members of the legislature, on a vote of no confidence.

6. The legislative power of Trinidad and Tobago resides in a bicameral Parliament, which comprises the President, an upper house called the Senate and a lower house called the House of Representatives. The Senate consists of 31 appointed members. Of the 31 senators, 16 are appointed on the advice of the Prime Minister, six are appointed on the advice of the Leader of the Opposition and nine are appointed by the President in his discretion from outstanding persons from economic, social or community organizations and other major fields of endeavour. The House of Representatives consists of 36 members elected by universal adult suffrage every five years, from the 36 different constituencies into which Trinidad and Tobago is divided.

Parliament is empowered by section 53 of the Constitution to make laws for the peace, order and good government of Trinidad and Tobago. Parliament may alter the Constitution. However some parts of the Constitution are entrenched and can only be altered by Parliament following the adoption of special procedures with special majorities.

7. In 1888, the island of Tobago merged administratively with Trinidad to form the single colony of Trinidad and Tobago. Of the 36 constituencies into which Trinidad and Tobago is divided, two are in Tobago. Until the formation of the Tobago House of Assembly in 1980, the smaller island's affairs were administered entirely from Port-of-Spain, Trinidad's capital city. With the passage of the Tobago House of Assembly Act in 1980, the Tobago House of Assembly was established for the purpose of making better provision for the administration of the island of Tobago. The result was that the island acquired a degree of autonomy not previously enjoyed. Under this Act the Assembly was given responsibility for formulating and implementing policy on all matters referred to it by the Minister and for implementing in Tobago, government policy relating to matters set out in the Act. This 1980 Act has since been repealed and replaced by the Tobago House of Assembly Act No. 40 of 1996. Under the 1996 Act, the Tobago House of Assembly has power both to formulate and implement policy in relation to a wide spectrum of matters set out in the Act. Although the Cabinet constitutionally retains general direction and control over the Assembly, in practice the Assembly retains substantial autonomy over Tobago.

8. The Constitution establishes a Supreme Court of Judicature for Trinidad and Tobago consisting of a High Court of Justice and a Court of Appeal. The Chief Justice has overall responsibility for the administration of justice in Trinidad and Tobago and heads the independent judiciary. The judiciary comprises the higher judiciary (the Supreme Court of Judicature) and the lower judiciary (the Magistracy). The Supreme Court is housed in four locations in the country. The Magistracy is divided into 13 districts. The Magistracy and the High Court exercise original jurisdiction in civil and criminal matters. The Magistracy in its petty civil division deals with civil matters involving sums of less than TT$ 15,000. It exercises summary jurisdiction in criminal matters and hears preliminary inquiries in indictable matters to determine whether a matter is to be held over for trial in the assizes. The High Court hears indictable criminal matters, family matters and civil matters involving sums over the petty civil limit. There is a separate Industrial Court and a Tax Appeal Board, which are superior courts of record. Appeals from the Magistracy and the High Court lie to the Court of Appeal. The Chief Justice is the President of the Court of Appeal. Appeals from the Court of Appeal lie with the Judicial Committee of the Privy Council in England, sometimes as of right and sometimes with leave of the Court of Appeal. The Privy Council is the highest court of appeal. At present the judiciary headed by the Chief Justice comprises 8 Appeal Court judges, 22 High Court judges and 37 magistrates. There are various provisions in the Constitution designed to secure judicial independence, in particular in relation to the appointment and security of tenure of judges. In all cases dealing with the validity of subsidiary legislation and the constitutionality of Acts of Parliament, the courts have upheld the principle of the rule of law.

9. The day-to-day work of government is carried on for the most part by a civil service organized in ministries and departments. The Constitution insulates members of the civil service from political interference being exercised directly upon them by the Government of the day, by vesting in autonomous commissions, to the exclusion of any authority or person, the power to appoint, remove and exercise disciplinary proceedings.

10. The appointment, transfer and dismissal of police officers and members of the Defence Force are also vested in autonomous Service Commissions.

11. Geographically, the Republic of Trinidad and Tobago is the most southerly of the Caribbean islands, located just seven miles north-east of Venezuela. The country is composed of two separate islands, Trinidad, which is 4,820 square kilometres and Tobago, which has an area of 303 square kilometres. Tobago is 32.2 km to the north-east of Trinidad. The population of Trinidad and Tobago is estimated at 1.282 million. In 1998, 27.9 per cent of the population was estimated to be below 15 years of age and 6.3 per cent of the population was estimated to be 65 years and over.

12. Trinidad and Tobago is noted for its ethnic and cultural diversity. Based on a 1990 population census, approximately 40.3 per cent of the population is of East Indian descent, 39.6 per cent is of African descent, 0.6 per cent white, 0.4 per cent Chinese, 18.4 per cent mixed, 0.2 per cent other and 0.4 per cent not stated. Religious tolerance allows for the active observance of many faiths, including Christianity, Hinduism, Islam and Orisa. The official language of Trinidad and Tobago is English.

13. Trinidad and Tobago has a buoyant economy with a recorded gross domestic product (GDP) at market prices of TT$ 36,493,500 million in 1998. The per capita income in 1998 was equivalent to US$ 4.261. The domestic inflation rate measured 5.6 per cent in 1998. The external debt as a percentage has declined from 26.5 per cent at the end of 1997 to 24.6 per cent at the end of 1998.

14. In April 1993, the Government of Trinidad and Tobago dismantled the regime of exchange controls and introduced a liberal foreign exchange system in which the Trinidad and Tobago dollar was allowed to float. At the end of June 1999, the TT/US dollar exchange rate stood at US$ 1 = TT$ 6.2997. (This refers to the weighted average selling exchange rate.)

15. The economy is heavily dependent on the energy and energy-related sectors for most of its export earnings. These sectors comprise the petroleum and petro-chemical industries, as well as other heavy industries utilizing natural gas as feedstock, producing methanol, fertilizers, natural gas liquids and iron and steel products. At present there are eight world-scale ammonia plants, four methanol plants, one urea plant, an iron and steel mill, a natural gas processing facility and a recently commissioned liquefied natural gas plant.

16. In terms of each sector's contribution to GDP in 1998, the non-energy sectors comprise agriculture (2%), manufacturing (8.3%), construction (10.3%), distribution (17.1%), electricity and water (2.3%), transport, storage and communication (9.5%), finance, insurance and real estate (11.5 %), government (8.9 %), and other services (6.6 %).

17. Following recent significant financial and economic reforms, the Trinidad and Tobago economy has been on a positive growth path over the last five years. The economy grew by 3.6 per cent in 1998 and by 0.9 per cent in the first three months of 1999. Consequently the unemployment rate continued its downward trend, reaching 14.2 per cent in 1998. The major generators of jobs were the construction sector (8.1 thousand), services sector (6.5 thousand), and the manufacturing sector (4.8 thousand).

18. The education system in Trinidad and Tobago is modelled on the English system. The school system is organized into public and private schools. Public government schools and government assisted denominational schools provide free education at the primary and secondary school levels up to Form 5 or Grade 12, and for some students, an additional two years to write the "Advanced Level" examinations set by the Universities of Cambridge and London, England. Government schools are wholly owned by the Government while government-assisted schools are public schools, the board of management of which receive public funds. Primary schools are for children between the ages of 5 and 12, and secondary schools for students aged 12 to 20 years. There are also a number of private primary and secondary schools. At present there are a total of 100 secondary schools and 477 primary schools in the country. Of the 100 secondary schools, 29 are government-assisted schools. The Education Act, chapter 39:01, makes it the duty of every parent of a child between the ages of 6 and 12 to cause the child to receive full time education by regular attendance at school. In the 1998/1999 academic year there were a total of 169,580 students enrolled in primary schools. Education at the University of the West Indies is available at heavily subsidized rates and one of the campuses is in Trinidad.

II. INFORMATION IN RELATION TO INDIVIDUAL ARTICLES OF THE COVENANT

Article 1

19. The people of Trinidad and Tobago exercised their inalienable right to self-determination through the attainment of political independence from the United Kingdom in 1962. As a sovereign independent State, Trinidad and Tobago since that date has freely chosen its own economic, social and cultural development policies. The right of the people to self-determination is one of the cornerstones upon which the Republic of Trinidad and Tobago is founded.

20. The right to join political parties and to express political views is expressly recognized in section 4 (e) of the Constitution. In accordance with the Constitution, Trinidad and Tobago is divided into 36 constituencies, two of which are in Tobago. After a parliamentary election, held every five years, the successful candidate in each constituency becomes a member of the House of Representatives, the lower house of Parliament. Section 73 of the Constitution provides that the election of members of the House of Representatives shall be by secret ballot and in accordance with the first-past-the-post system (relative majority system). Trinidad and Tobago has held free and fair elections every five years since 1956. Historically, in terms of political parties, the People's National Movement (PNM) came into power in September 1956 and remained undefeated until December 1986 when it lost to a coalition party called the National Alliance for Reconstruction (NAR). The NAR won a substantial victory in 1986, ending three decades of primacy by the PNM. Five years later, in November 1991, the PNM was returned to power, winning 21 out of the 36 seats in the House of Representatives, with the United National Congress (UNC) winning 13 seats and the NAR the two Tobago seats. At the last general elections, in 1995, the (UNC) and the PNM each won 17 of the 36 electoral seats. The remaining two seats in Tobago were won by the NAR. The UNC and the NAR opted to join together to form the present coalition Government, which is still in power under the leadership of the Prime Minister, Mr. Basdeo Panday. Since the last parliamentary elections, two members of the opposition party have crossed the floor to join the ruling party in the House of

Representatives. Also, one of the two Tobago representatives in the government party has since declared herself an independent member of the House of Representatives. The next parliamentary elections are due constitutionally in the year 2000.

21. Tobago has its own House of Assembly, a body corporate, established by Act of Parliament in 1980. That 1980 Act was repealed and replaced by a new Tobago House of Assembly Act (No. 40), in 1996. Under the new Act the Assembly is a body corporate consisting of 12 Assemblymen elected by the people of Tobago, four appointed Councillors and a Presiding Officer. The Assemblymen elect from among their members the Chief Secretary and the Deputy Chief Secretary. The Assembly continues for four years from the date of its first sitting. The Act, in section 25, provides that the House of Assembly is responsible, subject to section 75 (1) of the Constitution, for the formulation and implementation of the policy on matters set out in the Fifth Schedule to the Act, such as the collection of revenue and the meeting of expenditure incurred in carrying out the functions of the Assembly, State lands, tourism, sports, culture and the arts, community development, infrastructure, the environment, health services, education and social welfare. Under section 26 of the Act, the Government retains responsibility for matters set out in the Sixth Schedule to the Act including national security, foreign affairs and immigration. The Cabinet, however, retains general direction and control of the Assembly, in accordance with section 75 (1) of the Constitution.

22. The Government's economic policy is directed to the development of a robust and open market driven economy. The Government is committed to actively encouraging foreign investment in Trinidad and Tobago. Apart from enacting legislation to remove restrictions on foreign investment and to remove foreign exchange controls, the Government has also made a wide range of fiscal incentives available to the foreign investor. These generally take the form of import duty concessions or other tax allowances.

23. The principal natural resource of Trinidad and Tobago is hydrocarbons. Between 1974 and 1986, the policy of the Government was to localize companies owned by foreigners by acquiring a majority shareholding in these concerns. For example, in 1985, the Government acquired the onshore assets of Texaco Trinidad Limited, incorporating them into the Trinidad and Tobago Oil Company (Trintoc), a 100 per cent State owned company. Later that year, the Government bought out the shareholding of Tesoro to form the Trinidad and Tobago Petroleum Company (Trintopec). In 1993, the two companies were merged into Petrotrin. Between 1987 and 1991, the policy of localization began to weaken, but this process accelerated after 1991. From 1992, the Government eschewed direct involvement in the energy sector, deciding instead to limit its involvement to being a facilitator and only maintaining strategic investments where necessary. Despite the relaxing of criteria for capital investment in the petroleum sector, the Government retains ownership, leasing land and offshore acreage for a set period. British Petroleum Amoco is the largest natural gas producer in the country. The State owned National Gas Company is responsible for the purchase, transportation and sale of natural gas in Trinidad and Tobago. The State retains a 100 per cent shareholding in Petrotrin, National Petroleum and the National Gas Company, and continues to maintain a majority share in Trinmar, with Texaco retaining a one third share. As part of the reform efforts in the economy, the Government revised the incentive structure of the petroleum industry, moving from royalty-type arrangements to production-sharing arrangements. Over the period 1995-1997, production-sharing contracts for nine offshore blocks, with a total acreage of over 592,000 hectares, have been signed.

24. Asphalt is mined from the Pitch Lake at La Brea on the south-west coast of Trinidad, the world's largest natural asphalt lake, where reserves are estimated at 420 years. Current sales earn around four to five million United States dollars annually with 90 per cent of production being exported to Germany (54%), the United Kingdom (34%) and the United States (12%).

25. Trinidad and Tobago is still relatively heavily forested and the bulk of the forests are State owned. Based on 1997 estimates, the official figure for the total forested area in Trinidad is estimated at 230,000 hectares; some 125,000 hectares comprise forest reserves, 85,000 hectares other State forests, and 20,000 hectares are privately owned. Exploited timber supports a thriving local saw-milling industry with 63 mills. The range of products includes finished kiln-dried board, construction grade timber, rough timber and boxing board. About 9,000 hectares of teak and 5,000 hectares of pine are established as plantation forests at different localities. Teak plantations dominate in the south of Trinidad.

26. The fisheries of Trinidad and Tobago are open access fisheries where there is no restriction on the numbers of persons who might invest in the industry. The fisheries sector of Trinidad and Tobago has been looking outwards to overseas export markets as it develops its offshore production capability. This move is supported by the government trade policy of the 1990s that promotes diversification and development of a strong export-oriented economy. There is a diverse fishing fleet engaged in the harvesting of these resources, including artisanal vessels (pirogues) and mechanized semi-industrial and industrial vessels. According to a 1998 census, there are a total of 1,251 fishing vessels operating throughout Trinidad and Tobago. A summary of the estimated landings and value for the artisanal fishery is contained in the following table:

Year	1995	1996	1997
Total landing (kg)	7,297,504	8,259,405	9,967,360
Total value	$65,597,178	$74,645,153	$79,207,566

27. In Trinidad, a comparatively small number of industrial type trawlers, operating mainly from Port-of-Spain and Orange Valley, target shrimp. The shrimp trawl fishing industry of Trinidad and Tobago is considered the country's most valuable, with 1996 trawl landings (382 tonnes shrimp valued at TT$ 6.3 m, and 281 tonnes by-catch valued at TT$ 1.2 m) accounting for approximately 19 per cent by value of the total annual production of the country's artisanal fleet.

28. The average annual harvest during the period 1980-1996 of the living resources of Trinidad and Tobago came principally from timber, fisheries and game and were valued at about TT$ 94,480,000. Traditional export agriculture has been in decline, though sugar, cocoa, coffee and citrus are still major industries. Rice is grown for local processing and consumption, and coconuts, vegetables, fruit and tobacco are also produced. Based on a food crop survey by the Central Statistical Office, the gross earnings from 28 food crops harvested in Trinidad in 1998 were approximately TT$ 96,492,000. In 1997 the gross earnings in this category were estimated at TT$ 71,885,000.

29. Sugar cane production and export value in Trinidad and Tobago based on Caroni (1975) statistics was as follows:

Year	1996	1997	1998
Total sugar cane production from farmers and Caroni (1975) Ltd.	1,404,080 tonnes	1,419,585 tonnes	1,058,855 tonnes
Total value of exported sugar	TT$ 252,817,710	TT$ 266,613,669	TT$ 207,313,965

30. Commercial banks in Trinidad and Tobago upon independence were almost completely foreign owned. By the end of the 1960s there were seven foreign banks in operation - one British, three Canadian, two from the United States, and one jointly owned by British and Canadian interests. Fundamental changes in the structure of the domestic banking system began unfolding from 1970. In that year the assets of a foreign branch bank were nationalized, leading to the creation of the fully local National Commercial Bank. Meanwhile in keeping with the official localization policy, the foreign branch banks had embarked on a process of divestment of their shares to local investors. At present, there are six commercial banks operating in Trinidad and Tobago. Foreign ownership in the banking sector has resurfaced in the last two years and is currently a major feature of the banking system. Two banks, Inter-commercial Bank Limited and Citibank, are foreign owned while a third retains a minority shareholding. The others are either fully or majority owned by nationals. Consistent with overall liberalization of the economy, the Government now welcomes foreign investment and has removed most of the restrictions placed on this type of foreign investment.

31. In respect of the promotion of the realization of the right to self-determination, Trinidad and Tobago has been an active member of the United Nations Special Committee on de-colonization (the Special Committee of 24). It has served as Chairman of the Committee and has participated in United Nations visiting missions to territories in the Caribbean and the Pacific. This commitment was also reflected in the participation of a Trinidad and Tobago contingent as part of the Caricom group of the United Nations peacekeeping force sent to Haiti in 1994.

32. Trinidad and Tobago is committed to the process of the establishment of an international criminal court. Trinidad and Tobago became the second member State of the international community and the first State in the western hemisphere, to ratify the Rome Statute of the International Criminal Court on 6 April 1999. It was the concerns of Trinidad and Tobago, spearheaded by the then Prime Minister, now President, of Trinidad and Tobago, Mr. Arthur N.R. Robinson, which led to renewed attention being paid within the United Nations to the establishment of a permanent international criminal court. At the forty-fourth session of the United Nations General Assembly (1989), the Government of Trinidad and Tobago, under the leadership of Mr. Robinson, reintroduced onto the agenda of the Organization, the issue of the establishment of such a court. Trinidad and Tobago's decision to reintroduce this issue was prompted by the need to deal with the debilitating effects which the illicit traffic in narcotic drugs was having on small and vulnerable States. The Government of Trinidad and Tobago also co-hosted with the Parliamentarians for Global Action, a regional workshop supported by the

Ford Foundation and UNICEF, on Mechanisms for the Development of International Criminal Justice on 14 and 15 May 1999 in Port-of-Spain, Trinidad. In March 1999 Trinidad and Tobago co-hosted together with No Peace Without Justice, a non-governmental organization comprising parliamentarians worldwide, an inter-governmental conference to promulgate the signature and ratification of the Rome Statute. This led to the signing of the Port-of-Spain Declaration on the International Criminal Court in which participating States in the region unanimously pledged their commitment to pursue the process of ratification of the Rome Statute within the shortest possible time. Additiionally, in May 1999, Trinidad and Tobago hosted a meeting of the Commonwealth Law Ministers, at which the signature and ratification of the Rome Statute was included as an item on the agenda.

33. Trinidad and Tobago is the first country in the Caribbean to prepare and introduce domestic legislation in accordance with the United Nations resolution calling upon Governments to facilitate cooperation with the ad hoc Tribunals set up by the United Nations, to investigate acts of genocide and crimes against humanity in Rwanda and Yugoslavia. This domestic legislation, called the International War Crimes Tribunals Act, No. 24 of 1998, is designed to provide assistance to the Former Yugoslavia Tribunal and the Rwanda Tribunal, in the performance of their functions.

Article 2

34. The rights recognized in the Covenant are largely mirrored in the present Constitution of Trinidad and Tobago. Chapter 1 of the Constitution is entitled, "The recognition and protection of fundamental human rights and freedoms". This chapter declares that "there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex" the rights and freedoms set out thereunder, including the right of the individual to equality before the law and the right to equality of treatment from any public authority. There is however no specific anti-discrimination provision in the Constitution.

35. Trinidad and Tobago has signed the Optional Protocol to the International Covenant on Civil and Political Rights, allowing the right of individual petition by those claiming to be victims of a breach of the Covenant, subject to a reservation in respect of persons under sentence of death.

36. Trinidad and Tobago by ratifying a number of international conventions has further signalled to the international community its commitment to combat discrimination and to promote equality. This country has ratified the International Convention on the Elimination of All Forms of Racial Discrimination and its citizens have recourse to the Committee on the Elimination of Racial Discrimination for the purpose of lodging a complaint.

37. In Trinidad and Tobago, section 14 of the Constitution expressly declares that if any person alleges that any of his rights are being or are likely to be contravened that person may apply by way of originating motion to the High Court, which has original jurisdiction to hear such applications.

38. The Preamble to the Constitution, which is relied on as an aid to constitutional interpretation, refers to the "equal and inalienable rights with which all members of the human

family are endowed". The rights enshrined under the Constitution are expressed as rights of the "individual" and are therefore guaranteed to all persons within the jurisdiction, including individuals or aliens who are not citizens or residents of this country.

39. The High Court of Justice has original jurisdiction in matters involving the interpretation of the Constitution. The Constitution confers a right of appeal from the High Court to the Court of Appeal against an order or decision relating to the interpretation of the Constitution, or redress for contravention of the provisions for the protection of fundamental rights. Further, the Constitution confers a right of appeal to the Judicial Committee of the Privy Council in any civil, criminal or other proceedings which involve a question as to the interpretation of the Constitution.

40. Persons who are prejudiced by an act or omission of a public authority or body, for which no constitutional relief is available, may with leave of the High Court apply for judicial review. The High Court in judicial review applications supervises the body reviewed to ensure that its decisions are taken according to public law standards without a breach of inter alia the principles of legality, equality, non-discrimination, protection of legitimate expectations and procedural propriety. On an application for judicial review the High Court is empowered to grant the prerogative remedies of certiorari, prohibition or mandamus. The Court is also empowered to award damages on an application for judicial review, if such damages would have been recoverable in an ordinary action begun by writ or constitutional motion.

41. It is clear from the numbers of constitutional and judicial review applications being filed that the public are largely aware of their constitutional and other civil rights and that public law remedies of constitutional motion and judicial review are within reach of the average individual. According to the records of the civil department of the Ministry of the Attorney-General, from 1991 to May 1999, approximately 572 constitutional motions and 248 judicial review applications have been filed, averaging some 68 motions and 30 judicial review applications per year. Since 1990 the State has successfully defended only 76 of the 572 constitutional motions filed against it. The rest of matters were either settled or lost in court. Monetary compensation is routinely awarded in all constitutional redress cases.

42. Constitutional motions and judicial review applications are given priority amongst the civil cases listed for hearing in the High Court. There is an extensive body of local case law in which the Courts have adjudicated in these types of matters and the number of successful applications are testimony to the independence of the judiciary and its effective role as the guardian of constitutional rights.

43. The Legal Aid and Advisory Act, 1976, chapter 7:07, made legal aid readily available to persons of small or moderate means and enabled the cost of legal aid or advice to be defrayed wholly or partly out of monies provided by Parliament. This legislation was recently amended by the Legal Aid (Amendment) Act passed in Parliament in July 1999. Under the Legal Aid scheme the Authority provides legal aid free of charge but it may require an applicant to make some contribution, if he has the means to do so.

44. Previously an alien's right to hold an interest in land or in a company in Trinidad and Tobago was restricted by the Aliens (Landholding) Act, No. 36 of 1921, chapter 58:02. Under

the former Act, an alien could only hold land on an annual tenancy for the purpose of his residence, trade or business, up to a maximum of five acres. To hold land as an owner, tenant or mortgagee or to acquire land in excess of five acres, an alien was required to obtain a presidential licence. However this Act has since been repealed and replaced by the Foreign Investment Act No. 16 of 1990. This Act has liberalized government policy with regard to alien landholding, so that a foreign investor may now purchase up to one acre of land for residential purposes and five acres of land for the purpose of trade or business, without obtaining a licence from the President. A foreign investor is defined in the Act as an individual who is neither a citizen of a Caricom member country or a resident of Trinidad and Tobago. Foreign investors may exercise the option to lease property or buy freehold title.

45. There also exists within the jurisdiction an Ombudsman. The office of the Ombudsman is a creature of the Constitution (sect. 91) that came into effect in 1976. The role of the Ombudsman is to investigate citizen complaints concerning the administrative acts or decisions of government agencies. The Ombudsman holds office for a period of five years and is appointed by the President acting in consultation with the Prime Minister and the Leader of Opposition. The Ombudsman Act No. 23 of 1977 provides that complaints to the Ombudsman and requests for investigation shall be made in writing, but in practice complaints made by telephone or fax are acted upon. Section 3 (4) of the Act states that where the Ombudsman is of the opinion that there is evidence of any breach of duty, misconduct or criminal offence on the part of any officer or employee of any department or authority, he may refer the matter to the authority competent to take disciplinary or other proceedings against him. The Ombudsman has published annual reports since 1977. An average of 1,000 new complaints are made to the Ombudsman each year. The Ombudsman in his 1997 report stated that "complaints are received from citizens throughout the two islands and from every social group, race and class". In 1997, a total of 1,276 complaints were made to the Ombudsman and by year end the Ombudsman had completed investigations on some 48 per cent of these complaints.

46. The main office of the Ombudsman is situated in the capital city of Port-of-Spain. Sub-offices have been established in the towns of San Fernando, Sangre Grande and Rio Claro in Trinidad and in Scarborough Tobago. These offices are located so as to make the services of the Ombudsman as accessible, available, cost free and time saving as possible to the entire population.

47. In terms of measures taken to promote awareness of constitutional rights, the Ministry of Information is the repository of government information. Its radio, television and research library units disseminate information on a daily basis to members of the public. The research library unit also serves as a distribution centre for the printed material produced by the Division and other ministries.

48. In the recent past, a booklet entitled "A citizen's guide to the Constitution" produced by the Ministry of the Attorney-General, has been circulated to 600 school libraries, 100 rural schools, 68 private schools, 78 embassies, 90 special libraries and 30 foreign missions. Also circulated was a booklet entitled "Foundations of Government" which provides information on the republican Constitution and the structure of government. Information on the United Nations

is also circulated, subject to availability of material. Displays are also mounted by the Ministry of Information to mark international days observed by the United Nations, including Human Rights Day.

49. In terms of dissemination of information by the media, the television and radio units produce programmes and documentaries on national, social and cultural activities. Over the period 1996-1999, the Ministry of Information produced over 25 programmes intended to educate the public about their civil rights, including a series on the administration of justice. With respect to the television unit, 11 features have been produced since 1996 to disseminate information on new and existing legislation affecting the public, inter alia programmes on the following:

Equal Opportunities Bill

Constitutional Amendment Bill

Criminal justice

Domestic Violence Bill

Death penalty
International Criminal Court

Regional Magistrates' Conference

Attorneys-General of Caricom Meeting

Dangerous Drugs Bill

Human Rights Day speech.

50. Every year the Ministry of the Attorney-General issues a publication entitled "The Year in Review". This publication highlights the work of the Ministry of the Attorney-General, new and proposed legislation and other areas of legal focus.

Article 3

51. The equal rights of men and women are guaranteed under the Constitution. The fundamental human rights and freedoms set out in chapter 1, part 1, of the Constitution are recognized and declared without distinction by reason of, inter alia, sex.

52. In 1985, Trinidad and Tobago signed the Convention on the Elimination of All Forms of Discrimination against Women. It ratified that Convention on 12 January 1990. Trinidad and Tobago ratified the Convention on the Political Rights of Women on 24 June 1966.

53. Trinidad and Tobago was represented at the mid-decade World Conference of the United Nations Decade for Women held in Copenhagen in 1980 where member countries were

asked to implement the Programme of Action adopted by the Conference. One aspect of the Programme of Action called on Governments to devise mechanisms whereby unpaid work can be recognized and reflected in the gross national product of every country. The Government of Trinidad and Tobago implemented the Counting of Unremunerated Work Act in 1996.

54. The Government of Trinidad and Tobago has drafted equal opportunities legislation in the form of an Equal Opportunities Bill (1998). This Bill is expected to be laid before Parliament in the near future. The objective of the proposed legislation is inter alia to strive for equality of opportunity ensuring that no individual is excluded from the nation's benefits and resources on the grounds of their gender, race, ethnicity or religion. Under clause 7 of the proposed legislation, a person shall not, otherwise than in private, do any act which is done because of the gender, race, ethnicity, origin or religion of the other person or which is done with the intention of inciting gender, racial or religious hatred.

55. The Maternity Protection (Amendment) Act No. 4 of 1998 was implemented to prevent discrimination against women on the grounds of pregnancy. The Act provides in section 7 that an employee is entitled to leave of absence for the purpose of maternity leave; to pay while on maternity leave; and to resume work after such leave on terms no less favourable than were enjoyed by her immediately prior to her leave. The Act provides that where an employee has proceeded on maternity leave and the child of the employee dies at birth or within the period of maternity leave, the employee shall be entitled to the remaining period of maternity leave with pay. Further, where an employee has not proceeded on maternity leave and a premature birth occurs and the child lives, the employee is entitled to the full period of maternity leave with pay. If a premature birth occurs and the child dies within 13 weeks thereafter, the employee is still entitled under the Act to the full or remaining period of maternity leave with pay. However an employee is not entitled to these rights unless as of the expected date of confinement, she has been continuously employed for a period of not less than 12 months and she informs her employer of her intention to return to work at the expiry of her maternity leave. Section 9 of the Act states that an employee is entitled to 13 weeks maternity leave and may proceed on such leave 6 weeks prior to the probable date of confinement.

56. The Sexual Offences Act of 1986 replaced the existing laws of Trinidad and Tobago relating to sexual crimes. This Act seeks to protect women from various sexual offences including rape, sexual assault, incest and sexual indecency. Under the Act, a male person (over the age of 14) who commits the offence of rape is liable on conviction to imprisonment for life. The age of sexual consent under this Act is 16.

57. With regard to the participation of women in the political life of the country, there are no laws that restrict the participation of women in government or in political parties. The statistics of women's representation in decision-making positions in central and local government are as follows:

Level of decision-making in government	Total No. of women	Total No. of representatives (men and women)
House of Representatives	4	36
Senate	10	31
Local government (1996)	22	124
Local government (1999)	28	124

58. Based on Ministry of Education statistics the number of females enrolled in primary and secondary schools was as follows:

Primary schools:

Year	No. of male students	No. of female students
1997/98	89 787	86 417
1998/99	86 244	83 336

Secondary schools:

Year	No. of male students	No. of female students
1997/98	51 931	54 119

59. Government technical schools enrolment for the 1998/99 academic year:

Technical institute	Full-time, male students	Part-time, male students	Full-time, female students		Part-time, female students	
				% of total full-time students		% of total part-time students
San Fernando Technical	410	596	269	39.61%	264	30.69%
John Donaldson Technical	716	781	265	27.01%	357	31.37%

60. Enrolment at the University of the West Indies, St. Augustine Campus, based on 1996/97 statistics shows a slightly higher number of female full-time and part-time students enrolled than male students. (Note that a small percentage of these students is from other jurisdictions.)

Full-time students

Degree	Male	Female	Total
Undergraduate	1 778	2 003	3 781
Diploma	11	41	52
Certificate	8	18	26
Higher degrees	96	124	220
Advanced diploma	3	0	3
Total No. of full-time students enrolled	1 896 (46.4%)	2 106 (51.6%)	4 082

Part-time students

Degree	Male	Female	Total
Undergraduate	135	297	432
Diploma	36	99	135
Certificate	93	187	280
Higher degrees	532	446	978
Advanced diploma	35	65	100
Total No. of full-time students enrolled	831 (43.2%)	1 094 (56.8%)	1 925

61. In the judiciary, females comprise 2 out of 8 Court of Appeal judges, and 4 out of 22 High Court judges. However, there is a higher ratio of female magistrates: 21 out of 37 female. In terms of professional schools, the Hugh Wooding Law School in Trinidad admitted 53 males and 76 females in the 1998/99 academic year.

62. Labour force data in relation to men and women are as follows:

Year	Total labour force	No. of males	No. of females
1998	558 700	344 600	214 100
1997	541 000	335 800	205 200

Year	Unemployment rate	No. of unemployed males	No. of unemployed females
1998	14.2%	39 000	40 400
1997	15%	41 300	39 000

63. Employed labour force, by sex and occupational group - 1996 (Central Statistical Office, The Continuous Sample Survey of Population: Labour Force Report 1995).

	No. of males employed	No. of females employed		Total No. of employees
			Percentage of total	
Legislative senior officials, managers	172	123	41.69%	295
Professionals	84	55	39.57%	139
Technicians and Associate Professions	230	263	53.34%	493
Service workers (incl. Defence Force) and shop sales workers	330	298	47.45%	628
Agriculture, forestry and fishery workers	167	23	12.1 %	190
Craft and related workers	646	94	12.7 %	740
Plant and machine operators and assemblers	339	50	12.85%	389
Elementary occupations	724	357	33.02%	1 081

64. Women in Trinidad and Tobago comprise an estimated 49.7 per cent of the population, but are still considered to be under-represented at the decision-making levels in the various sectors. Many women have achieved high levels of education and leadership positions. Occupational data continue to show that fewer women than men are employed as senior officials, managers and professionals. Women are over-represented in the clerical category (72 per cent). Of the six major trade unions, only one is headed by a woman. Of the Permanent Secretaries within the Public Service, 45.5 per cent are women. Only 24 per cent of the ambassadors are women and 18 per cent of the judges. The Ministry of Gender Affairs is the division of the Government charged with implementation of government policies relating to gender affairs. The Ministry formulates national gender policy and is involved in legislative reform. The Ministry recently prepared a brief on sexual harassment legislation and participated in the Advisory Committee for the Domestic Violence Bill (1999).

Article 4

65. The Constitution, in chapter 1, part III, section 8, provides that the President "may from time to time make a proclamation declaring that a state of public emergency exists". A proclamation shall not be effective unless it contains a declaration that the President is satisfied that a public emergency has arisen as a result of either the imminence of a state of war between Trinidad and Tobago and a foreign State; any earthquake, hurricane, flood, fire, outbreak of pestilence or of infectious disease, or other calamity, or that action has been taken or is immediately threatened, by any person, of such a nature and on so extensive a scale, as to be likely to endanger public safety or to deprive the community or any substantial portion of the community, of supplies or services essential to life.

66. The Constitution provides that within three days of the making of the proclamation, the President shall deliver to the Speaker, for presentation to the House of Representatives a statement setting out the specific grounds on which the decision to declare the existence of a state of public emergency was based, and a date shall be fixed for debate on this statement as

soon as practicable but not later than 15 days from the date of the proclamation. The proclamation shall, unless revoked, remain in force for 15 days. Before its expiration the proclamation may be extended from time to time by resolution supported by a simple majority vote of the House of Representatives. Any extensions beyond six months require the support of not less than three fifths of all the members of both Houses of Parliament.

67. The Constitution permits some derogation from particular rights in time of emergency. In such period the President may make regulations for dealing with that situation, including provision for detention of persons. An act that is passed during a period of public emergency and is expressly declared to have effect only during that period shall have effect, even though inconsistent with section 4 and section 5 of the Constitution (the fundamental rights sections), except insofar as its provisions may be shown not to be reasonably justifiable for the purpose of dealing with the situation that exists during that period.

68. Where any person is unlawfully detained by virtue of an act or regulations passed during period of emergency, he may request at any time during his detention that his case be reviewed by an independent and impartial tribunal established by law and presided over by a person appointed by the Chief Justice.

69. Since 1987, there have been two states of emergency declared in Trinidad and Tobago. On 27 July 1990, 114 members of a Muslim group (the Jamaat al Muslimeen) attempted to overthrow the lawfully constituted Government of the country. During this uprising, members of this group forcibly occupied the main television station and the Parliament building. A number of persons lost their lives and persons were taken hostage at both locations. The Prime Minister and the Minister of National Security were injured in the shootings. Additionally, the Police Headquarters in the capital, where criminal records were kept, was car bombed. There was also widespread looting in the capital city and other forms of civil unrest. The following day negotiations began between the leader of the insurrectionists at the Parliament building, certain persons acting in the interest of the State including some parliamentarians and cabinet ministers, and the Dean of the Anglican Church, Canon Clarke, as chief negotiator. A document described as an amnesty was prepared and signed by the then Acting President and a copy delivered to the leader of the insurrectionists. The release of the hostages took place on 1 August 1990. On that day the 114 insurrectionists were taken into custody and were later charged with numerous crimes, including treason, arson and murder.

70. In the light of the events described above, by proclamation dated 28 July 1990, a state of emergency was declared in Trinidad and Tobago by the then Acting President. On 10 August 1990, the Acting President extended the state of public emergency for a period of three months. In accordance with its obligation under article 4 of the International Covenant on Civil and Political Rights, the Government, through its representative, informed the Secretary-General of the United Nations of this state of emergency.

71. This state of emergency was declared to better enable members of the police service to restore law and order. During this period of emergency, members of the army or defence force concentrated on devising strategies for dealing with the insurrectionists and other suspicious groupings throughout the country.

72. On 28 July 1990, the Commissioner of Police, acting under regulation 4 of the Emergency Powers Regulations, imposed a nationwide curfew. The curfew, with a few exceptions, was generally imposed between 6 a.m. and 6 p.m. The curfew hours were reduced on 7 September 1990 to between 7 p.m. and 5 a.m. and then on 8 November 1990 to between 1 a.m. and 5 a.m. The curfew was lifted later that month. The effect of the curfew was to prohibit individuals from leaving their homes outside of the prescribed hours. Public gatherings were also prohibited.

73. During this attempted coup, Emergency Powers Regulations were made by the President under section 7 of the Constitution. Under the said regulations, police officers were authorized to stop and search any person reasonably suspected of having any firearm, ammunition or explosive. Regulation 15 authorized a police officer to enter and search any premises and stop and search any vehicle or individual without a warrant in certain circumstances. Regulation 16 authorized police officers to arrest, without warrant, any person suspected of acting or about to act in a manner prejudicial to public safety or public order. However, these regulations did not permit any person to be detained by the police for a period in excess of 24 hours without the authority of a magistrate or police officer above the rank of senior superintendent. In any case, the period of detention was not to exceed seven days. The Minister of National Security was empowered under these regulations to make a detention order with respect to any person, with a view to preventing him acting in any manner prejudicial to public safety or public order. Any person so detained had the right to have his case reviewed by a tribunal consisting of three members appointed by the Chief Justice. Under these emergency regulations approximately 33 persons were detained, the majority of them because of their likely threat to national security during the period of emergency.

74. With respect to the 114 insurrectionists that were taken into custody upon release of the hostages, two suits were filed: a constitutional motion by all of them alleging that, by reason of the amnesty granted to them, their subsequent arrest and detention and prosecution for crimes were in breach of their constitutional rights; and a writ of habeas corpus by a few of them, based substantially on the same grounds. On 26 November 1991, after allowing appeals on a preliminary ruling, the Judicial Committee of the Privy Council ordered that these two actions should be consolidated, and that those who were not parties to the habeas corpus proceedings be thereafter so treated. Pursuant to these orders Brooks J. heard the consolidated actions and, on 30 June 1992, held that the pardon granted to the applicants was valid and that the detention and prosecution of the applicants was unconstitutional and, accordingly, they should be released. The Court of Appeal and Privy Council also held that the pardon was valid.

75. The second state of emergency was declared on 3 August 1995 and ended on 7 August 1995. This emergency was declared within a one-mile radius of the official residence of the Speaker of the House of Representatives, after the Speaker suspended a member of the Government from Parliament. Based on her actions, the Government moved a motion in Parliament for her removal as Speaker of the House. The Speaker vehemently refused to cooperate. The Government, in an attempt to address the situation, declared this limited state of emergency. Under Emergency Powers Regulations 1995, the Minister, on 3 August 1995, ordered the detention of the Speaker of the House of Representatives on the ground that the Speaker was, inter alia, carrying out her functions in an arbitrary, capricious and dictatorial manner. Accordingly, during this period the police stood guard at the gates of the Speaker's

official residence, thus keeping her under house arrest during this period of emergency. However the State of Emergency was revoked on 7 August, four days later. No other persons were detained during this period.

Article 5

76. Section 5 of the Constitution expressly declares that no law may abrogate, abridge or infringe or authorize the abrogation, abridgement or infringement of any of the fundamental human rights and freedoms recognized and declared in the Constitution except where expressly provided for, such as:

(i) During periods of public emergency; or

(ii) Where legislation is declared to be inconsistent with those rights and freedoms and is passed with the prescribed majorities in both Houses of Parliament.

77. Under section 13 of the Constitution, an Act may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution (the Bill of Rights sections). Such an Act can only be enacted with the approval of three fifths of the members of each House of Parliament. However even if such an Act is passed with the required parliamentary majorities, that legislation is still open to challenge in the High Court, on the ground that it is not reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual, or that it is not reasonably justifiable for the purpose of dealing with the situation that exists during a period of public emergency.

78. Since the courts are the guardians of the Constitution, they have the power to declare null and void any act of Parliament in violation of the human rights provisions of the Constitution.

79. Section 2 of the Constitution declares that it is the supreme law and any other law that is inconsistent with the Constitution is void to the extent of the inconsistency. By virtue of this supremacy clause, Parliament's sovereignty is limited and any legislative or administrative act or omission made in conflict with the Constitution is void pro tanto.

80. Parliament can amend the Constitution only if the constitutional prescriptions are observed. Section 54 provides that provisions of the Constitution relating to the fundamental rights and freedoms of individuals may not be altered unless the amendment is supported by the votes of no less than two thirds of all the members of each House of Parliament.

81. In Trinidad and Tobago, international law provisions are not automatically incorporated in and do not have direct effect on the domestic law unless expressly transformed by Act of Parliament. The Government of Trinidad and Tobago is currently reviewing all treaties and conventions entered into, to ensure that international obligations are being given effect in domestic law and where necessary, legislation is being implemented by various ministries.

Article 6

82. In Trinidad and Tobago the right of the individual to life and the right not to be deprived thereof except by due process of law, is the first right recognized in the Fundamental Human Rights and Freedoms section of the Constitution.

83. Where an unnatural death occurs in Trinidad and Tobago, the Coroner's Act chapter 6:04, provides for the holding of an inquest as to the cause and circumstances of the death. An unnatural death is defined as including every case of death of any person which occurs in a sudden, violent or unnatural manner, where a dead body is found as to which any reasonable suspicion exists that the death has not arisen from natural causes, or as to which, any reasonable suspicion exists that any person is criminally responsible for such death.

84. In Trinidad and Tobago, the infant mortality rate for 1998 was 15.6 per thousand live births, and the average annual rate of population growth in 1998 was 0.6 per cent. The infant mortality rate in 1997 was 16.2 per thousand live births and the average rate of population growth in 1997 was 0.9 per cent. Free health care is available at hospitals in Port-of-Spain, San Fernando, Mount Hope and Scarborough, several district hospitals and a network of community health centres. Antenatal care is provided in public health institutions to ensure that pregnancies will result in live, well babies. Food, multivitamin and iron supplementation is provided for pregnant women and children free of charge. There is an effective immunization programme for children for all common infectious diseases. Common childhood disorders that result in high infant mortality, such as diarrhoea, are treated efficiently and effectively at all government health institutions.

85. The Social Welfare Division of the Ministry of Social Development is responsible for the administration of old age pension, public assistance and other benefits to elderly, disabled and economically deprived citizens. In 1996, there were approximately 88,000 recipients of the old age pension and public assistance. The three main programmes offered by the Social Welfare Division are governed by statute. These are the Old Age Pension Act, chapter 32:02 as amended, the Public Assistance Act, chapter 32:03, and the Adoption of Children Act, chapter 46:03. An old age pension in the sum of TT$ 600 is available for persons aged 65 and over with an annual income of below TT$ 5,000. Public assistance targets the disabled, poor and needy children. Applications for public assistance are made at the local board office where the applicants reside. A disability assistance grant is available for persons between the ages of 40 and 65 years whose annual income is below TT$ 5,000.

86. Another government institution which promotes life expectancy is the Environmental Management Authority (EMA), which was established by the Government by Act No. 3 of 1995. Under the Act, the functions of this Authority are inter alia, to coordinate, facilitate and oversee the execution of a national environmental strategy; to implement written laws in relation to the conservation and wise use of the environment; to promote and encourage among all persons a better understanding of the environment; and to enhance the legal, regulatory and institutional framework for the environment. In 1997, the EMA focused on enforcing pollution control. It also prepared a comprehensive national environmental policy based on comments received during five public consultations and the Authority's own review. This policy states inter alia that the Government has accepted the responsibility to adopt policies and measures with a view to

promoting human health and the quality of life. Further, human beings have the right to live in an environment of quality that permits a life of dignity and well being. This responsibility includes the careful planning and management of natural resources: air, water, land, flora and fauna. In 1997, the Ministry of Works and the EMA collaborated in the design of a programme to reduce the level of vehicle emissions in Trinidad and Tobago. A complaints desk has been established at the EMA with an investigations hotline. Several large fish kills and a major oil spill were among the numerous investigations performed by the EMA in 1997.
Trinidad and Tobago is a signatory to several conventions and protocols relating to the conservation of biological resources, including the Convention on Biological Diversity, the Ramsar Convention on Wetlands of International Importance especially as Waterfowl Habitat and the Convention on International Trade in Endangered Species of Wild Flora and Fauna.

87. With regard to measures taken to reduce the threat of war, Trinidad and Tobago ratified the Treaty on the Non-Proliferation of Nuclear Weapons in October 1986. It ratified the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction on 24 June 1997.

88. As to the rules and regulations governing the use of firearms, the Firearms Act, chapter 16:01, provides that a person may purchase, acquire or have in his possession a firearm only if he holds a firearm user's licence with respect to such firearm. However section 7 of the Act provides an exemption from this general rule for police officers, special reserve police, members of the defence force, prison officers and customs officers, if such officers are acting in their official capacity, and if the firearm and ammunition are the property of the Government. The Police Service Regulations, chapter 15:01, provides that the Commissioner of Police shall, in his sole discretion, decide the quantities in which arms and ammunition may be issued to police officers. When any ammunition is discharged or lost, an immediate report shall be made to the Commissioner, setting out the circumstances relating to the discharge or loss of such ammunition.

89. Police Departmental Order No. 170/63 sets out guidelines for the use of firearms by police officers. These guidelines provide inter alia that firearms are to be used only as a last resort in cases of extreme emergency, in self-defence, or for the protection of the lives of others. They should on no account be used unless the member of the service is in fear for his life or serious injury, or to protect the life of some other person(s) or to save them from serious injuries. Firearms should never be used in an attempt to scare possible assailants or against persons trying to escape, except if the person attempting to escape is known to be dangerous and is himself armed with a firearm.

90. Existing measures for the compensation of victims of unlawful violent acts are currently being reviewed. The Criminal Procedure Act gives the Court the power immediately after the conviction of any person for any offence, to order the offender to pay a sum of money not exceeding $480, by way of satisfaction or compensation for any loss or injury suffered by the applicant. The Government has recently enacted a Criminal Injuries Compensation Act (1999). This Act seeks to establish a system of State assistance for victims of certain crimes including murder, manslaughter, wounding with intent and offences under the Sexual Offences Act. Section 5 of the Act seeks to establish a Criminal Injuries Compensation Board. Under section 24 of the Act a victim or dependant may apply to the Board for compensation in

accordance with the provisions of the Act. The Board, in determining whether or not to pay compensation, shall give consideration to the nature of the injuries suffered and whether there was any provocation by the victim. In determining the amount of compensation, the Board shall consider the amount received from any other source by the victim or his dependant. Section 29 of the Act provides that the Board may pay compensation under this Act to the victim, the dependant of the deceased victim, or the person responsible for the care and maintenance of the victim or dependant. Compensation may be paid in respect of expenses reasonably incurred as a result of the injury or death of the victim, the loss of earning power as a result of total or partial incapacity of such victim, pecuniary loss to the dependant of the deceased victim and other reasonable pecuniary loss. Section 30 provides that compensation may be paid whether or not a person is prosecuted or convicted of the crime on account of which the application is made. The amount of compensation shall be in the absolute discretion of the Board but such compensation shall not exceed TT$ 25,000.

91. As to the procedures established for investigating complaints of missing persons, these are set out in a police departmental order, No.216/92, which provides that every report of a missing person should be treated as a possible kidnapping or murder investigation. A person is deemed to be "missing" if a report is made that the person's whereabouts are unknown for a period in excess of 24 hours. When a report of a missing person is made at a police station, the police officer taking the report is required to record, in the police station diary, the name and address of the person making the report, the name and address of the missing person, a description of the missing person, including a description of the clothing the missing person was last seen wearing, the place where the missing person was last seen and the addresses of the relatives frequently visited by the missing person. A recent photograph of the missing person is obtained and a statement recorded from the person making the report. The officer taking the report is required to immediately transmit a description of the missing person by wireless or telephone to the Divisional Headquarters Sub-Control. From there, the message is transmitted through an established police network system to all police stations within the jurisdiction. A missing persons register is kept at the Divisional Criminal Investigations Department and all information pertaining to missing persons is recorded in it. The report of a missing person is investigated until the missing person is accounted for or located. If investigations are of a protracted nature, a particular officer may be appointed to continue the inquiries. An officer may, owing to the complexity of an investigation, seek assistance from the police criminal investigation department, the criminal records office or from any officer, up to the rank of inspector.

92. The ultimate sanction, the death penalty, which has not been abolished in this jurisdiction, is reserved for the most heinous crimes of murder and treason. For murder the death sentence is mandatory as specified in section 4 of the Offences against the Person Act, chapter 11:08, which provides that a person found guilty of murder "shall suffer death". According to the Treason Act (No. 16 of 1842), chapter 11:03, any person owing allegiance to the State, who, whether in Trinidad or elsewhere, forms an intention to levy war against the State or to overthrow the Government or the Constitution of Trinidad and Tobago by force, and manifests such intention by overt act or adheres to the enemies of the State by giving them aid or comfort, is guilty of treason and liable to suffer death by hanging. The penalty for treason is, however, discretionary.

93. The Children Act (No. 4 of 1925), chapter 46:01, section 79 provides that sentence of death shall not be pronounced on or recorded against a person convicted of an offence, if it appears to the court that at the time when the offence was committed he was under the age of 18 years.

94. Under the Criminal Procedure Act, chapter 12:02, where a woman convicted of an offence punishable with death is found to be pregnant, the sentence to be passed on her shall be a sentence of imprisonment for life instead of a sentence of death. The question of whether or not the woman is pregnant shall, before sentence is passed on her, be determined by a jury.

95. In Trinidad and Tobago persons on trial for crimes to which the death penalty applies are protected by universally recognized principles of fairness, embodied in the judicial system. The Constitution expressly prohibits Parliament from depriving a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations. Parliament also may not without just cause deprive a person charged with a criminal offence of the right to be presumed innocent until proved guilty according to law, the right to a fair and public hearing by an independent or impartial tribunal or the right to reasonable bail. Further, the applicable criminal process provides an accused with various avenues for appeal and acquittal, namely, at the preliminary inquiry, at the trial itself, on appeal from conviction in the court of first instance to the Court of Appeal and, as a matter of right, from the Court of Appeal to the Judicial Committee of the Privy Council, the final court. A person on whom the death sentence has been pronounced also has the right to challenge the constitutionality of the carrying out of the death penalty in an application made under section 14 of the Constitution.

96. Under section 87 (2) of the Constitution, after a person is convicted, the President may grant a full or conditional pardon or a respite from the execution of any punishment. Alternatively he may substitute a less severe form of punishment or he may remit the whole or any part of any sentence passed. However, the President in exercising his function under section 87 (2), is required to act in accordance with the advice of the Minister of National Security. The Minister of National Security is required to consult the Advisory Committee established by the Constitution, before he tenders his advice to the President. However the Minister of National Security is not obliged to act in accordance with the advice of the Advisory Committee when he advises the President.

97. Following the decision of the Judicial Committee of the Privy Council in 1993 in the landmark case of Pratt & Morgan v. The Attorney-General for Jamaica,[(1994)2 A.C.1], the Government of Trinidad must now comply with strict time-frames to ensure that the mandatory sentence of death for convicted murderers is carried into effect. Under the time-frames, the Court of Appeal should aim to hear and determine murder appeals within one year of the conviction, and the Privy Council, within one further year. Applications before the international human rights bodies should be completed within 18 months. Further, in any case in which execution was to be carried out more than five years after the sentence of death, there would be strong grounds for believing that the delay was such as to constitute "inhuman or degrading punishment or other treatment".

98. In January 1998, the Attorney-General submitted a status report and a statement on the implementation of the death penalty. It was discovered that the death penalty was not being

carried out because the time-frames for the hearing and determination of appeals by the judicial arm of the State were not being met. In order to comply with the constitutional time-frames laid down by the Privy Council, the Government has instituted a number of measures to ensure the completion of appeals in capital cases within the shortest possible time, consistent with due process of law. These measures include the increased allocation of resources to the Supreme Court, the establishment of a Case Management Unit to monitor the progress of capital cases and to take steps to facilitate their hearing and determination without delay, and the establishment in 1996 of a Computer Aided Transcription Unit in the Supreme Court to remove delays in the preparation of a complete and accurate court record.

99. In accordance with the ruling in Pratt v. Morgan, the Government of Trinidad and Tobago had no alternative but to commute to life imprisonment the sentences of death imposed on persons whose convictions had occurred outside the five-year limit. Since 1994 approximately 71 prisoners who were sentenced to death for murder have had their sentence commuted by the State to that of life imprisonment.

100. At present there are approximately 62 male and 5 female persons on death row. Since 1978, an unofficial moratorium existed on the implementation of the death penalty. However, the recent upsurge in criminal violence has necessitated the carrying out of the death penalty. In June 1999, nine persons who had been sentenced to death and who had exhausted all their domestic appeals and applications to the international bodies, had their sentences carried out. These nine persons had shot to death, execution style, a family of four, including two women. A single execution was also carried out by the State in July 1994.

101. Today all capital cases are being heard before the domestic courts of Trinidad and Tobago within the required time-frames. However, the Government has had little success in reducing delays before the international human rights bodies. These bodies, most notably the Inter-American Commission on Human Rights, have employed protracted procedures in the processing of petitions and the resulting delays are incompatible with the time-frames imposed by the Privy Council.

102. Trinidad and Tobago ratified the American Convention on Human Rights on 28 May 1991, before the Judicial Committee of the Privy Council imposed time frames for dealing with persons under sentence of death in Pratt v. Morgan. The Pratt v. Morgan decision and the inability of the State to enforce the law of the land, has effectively frustrated the will of the people of Trinidad and Tobago and, in consequence, undermined their respect and confidence in the administration of criminal justice. Such lack of confidence in the administration of justice, it is feared, may eventually lead to vigilante type justice. Accordingly, the Government of Trinidad and Tobago took a decision to give the Inter-American Commission on Human Rights the required one-year notice of its intention to withdraw from the American Convention on Human Rights. Also, in May 1998, the Government informed the Human Rights Committee of its intention to denounce the Optional Protocol to the International Covenant on Civil and Political Rights and to re-accede to the Optional Protocol, with a reservation excluding capital cases from jurisdiction under the Protocol.

103. In a recent appeal to the Privy Council from the Court of Appeal of Trinidad and Tobago, namely Thomas & Hilaire v. The Attorney-General, PC No 60 of 1998, the Judicial Committee

of the Privy Council held that the applicants, who were under sentence of death, had a right to a stay of execution pending the determination of their petition by the Inter-American Commission on Human Rights in that matter.

104. There exists in Trinidad and Tobago a National Committee for the Abolition of the Death Penalty in Trinidad and Tobago. There is also in existence within the Republic of Trinidad and Tobago a very active chapter of Amnesty International which has been very successful as a watchdog organization in respect of perceived infringements of the right to life.

Article 7

105. The Constitution of the Republic prevents the legislature, except in certain exceptional circumstances, from imposing or authorizing the imposition of cruel and unusual treatment or punishment.

106. With regard to the imposition of corporal punishment, under the Corporal Punishment (Offenders Over Sixteen) Act, any male offender above the age of 16, on being convicted of the offences mentioned in the schedule (such as robbery with aggravation or rape) may be ordered by the court to be flogged, in addition to any other punishment to which he is liable. Corporal punishment shall not be inflicted on persons under sentence of death. Under the Act the Court is required to specify the number of strokes to be inflicted, which shall not in any case exceed 20. The court may, in lieu of flogging, order the offender to be whipped. Section 7 of the Act provides that the instrument to be used for carrying out a sentence of flogging shall be the cat-o-nine tails and for carrying out a sentence of whipping, a rod of tamarind, birch or other switches. A sentence of flogging shall not be carried out in public. Every sentence of flogging shall be carried out in the presence of the medical officer of the prison. Under the Corporal Punishment Act, chapter 13:04, as amended by Act No. 9 of 1994, a sentence of flogging shall be carried out within six months of the passing of the sentence. Further, when a person sentenced to be flogged appeals the decision of the court, the sentence of flogging shall be suspended until determination of the appeal. Under the Children Act, chapter 46:01, section 83, a child or young person (between the ages of 7 and 16) may be sentenced to be whipped in lieu of any other punishment. If the offender is below 12 years of age, only a maximum of six strokes may be imposed. Above 12 years, a maximum of 12 strokes is allowed.

107. In Trinidad and Tobago, the rules which govern police officers in their interrogation of persons and the taking of statements are the English Judge's Rules of 1964, with appendices, adopted by the judges of Trinidad and Tobago in 1965. The Judge's Rules are rules of practice for the guidance of police officers, recognized by the courts as the manner in which and the conditions under which statements may be given by or obtained from prisoners, persons in custody and persons accused of crime generally. The principal significance of these rules in a trial is that evidence obtained through a breach of them, notably confessions, might be excluded at the discretion of the trial judge. These rules provide inter alia as follows:

(i) That it is a fundamental condition on the admissibility in evidence against any person, equally of any oral answer given by that person to a question put by a police officer and of any statement made by that person, that it shall have been voluntary, in the sense that it has not been obtained from him by fear of prejudice, or hope of advantage, exercised or held out by a person in authority, or by oppression.

(ii) When a police officer is trying to discover whether, or by whom, an offence has been committed, he is entitled to question any person, whether suspected or not, from whom he thinks that useful information may be obtained. He is so entitled whether or not the person in question has been taken into custody, so long as he has not been charged with the offence or informed that he may be prosecuted for it.

(iii) As soon as a police officer has evidence which would afford reasonable grounds for suspecting that a person has committed an offence, he shall caution that person or cause him to be cautioned before putting to him any questions, or further questions relating to that offence. The caution shall be in the following terms:

> "You are not obliged to say anything unless you wish to do so but what you say may be put into writing and given in evidence."

When after being cautioned a person is being questioned, or elects to make a statement, a record shall be kept of the time and place at which any such questioning or statement began and ended, and of the persons present.

(iv) Where a person is charged with or informed that he may be prosecuted for an offence, he shall be cautioned. It is only in exceptional cases that questions relating to the offence should be put to the accused person after he has been charged or informed that he may be prosecuted. Any questions put and answers given relating to the offence must be contemporaneously recorded and the record signed by that person.

Appendix B of the rules sets out administrative directions on interrogation and the taking of statements. These directions provide inter alia as follows:

(i) When a person is being questioned or elects to make a statement, a record should be kept of the time or times at which, during the questioning or making of a statement, there were intervals or refreshment was taken. The nature of the refreshment given should be noted.

(ii) Reasonable arrangements should be made for the comfort and refreshment of persons in attendance for questioning or from whom statements are being taken. Whenever practicable both the person being questioned or making a statement and the officer asking the questions or taking the statement should be seated.

(iii) As far as practicable, children (whether suspected of an offence or not) should only be interviewed in the presence of a parent or guardian, or, in their absence, some person who is not a police officer and is of the same sex as the child. A child or young person should not be arrested nor even interviewed at school, if such action can possibly be avoided.

(iv) In the case of a foreigner making a statement in his native language, an interpreter should take down the statement in the language in which it is made. An official English translation should be made in due course.

(v) Statements by persons under suspicion or charge should be authenticated by a senior police officer

108. Under the Police Service Act, chapter 15:01, section 38, any police officer who uses unnecessary violence on or ill-treats any prisoner, is liable on summary conviction to a fine of $750 and to imprisonment for six months.

109. Section 109 of the Summary Courts Act, chapter 4:20, provides that a person arrested, whether with or without a warrant, shall not be handcuffed or otherwise bound, except in the case of necessity or of reasonable apprehension of violence, or of attempt to escape, or by order of the court or of a magistrate or justice.

110. With respect to the right of redress for complaints against the conduct of police officers, the Police Complaints Authority Act No. 17 of 1993 was implemented in October 1995. The Police Complaints Authority was established under section 4 of this Act. The functions of the Authority under the Act are to receive complaints on the conduct of any police officer and to monitor the investigation of complaints by the Complaints Division. The Complaints Authority consists of five members appointed by the President. At present, the Authority is chaired by a retired Court of Appeal judge. In accordance with section 20 of the Act, the Commissioner of Police has established a unit known as the Complaints Division. This Division is staffed by police officers and it is charged with responsibility for investigating complaints made by members of the public against police officers which have been referred to it by the Complaints Authority. Section 21 of the Act provides that a person wishing to make a complaint shall do so in writing to the officer in charge at the nearest police station. The police officer in charge of the station is required to send a copy of the complaint to the Complaints Authority. The Authority records the complaint and submits it to the Division for investigation and resolution. Section 23 provides that the Division shall investigate all complaints in a thorough and impartial manner, except that where the Head of the Division is of the view that the complaint is frivolous, no action shall be undertaken.

111. On receipt of a complaint from the Police Complaints Authority, an investigator is assigned to investigate the complaint. An investigator from the Complaint Division's staff may be used or an external investigator from another police division or branch, depending on the nature of the complaint. Complaints may be resolved in any of the following ways:

(i) By taking no action, because the police officer complained against operated within the law and no fault was found in the performance of his duty;

(ii) By counselling/warning as to the manner in which he or she should perform his or her duties;

(iii) By invoking the provisions of regulations 81 and 84 of the Police Service Commission (Amendment) Regulations 1990, if it was found that the complaint was sustained and there were disciplinary breaches under the regulations; or

(iv) By criminal court action.

112. If a complainant is dissatisfied as to how his complaint was resolved by the Division, he has the right to a review by the Authority. A review must be requested by the person in writing within a month of his receipt of the letter advising him how the matter was resolved.

113. During its first year of operations the Authority received 1,405 complaints, reported in person, through police stations, through the mail and through other agencies, such as the Office of the Attorney-General and the Ombudsman. Of the total complaints received, 249 were classified under "battery", 11 under "illegally incarcerating persons" and 331 under "repeated verbal attacks and threats of incarceration". The overwhelming majority of complaints lodged at the Authority consisted of allegations of battery and harassment.

114. In its 1996/97 annual report, the Authority has stated that to a large extent, after investigations are completed, these reports reveal no evidence to support the complaints. In some instances the complainants themselves request that no further action be taken. Some refuse to give statements, while others cannot be located. In many cases where diligent investigations are conducted and statements obtained from both the complainants and witnesses, and there are clear breaches of discipline necessitating the defaulter being put before a disciplinary tribunal, some of the complainants abort the process by refusing to attend either a tribunal or the court to give evidence. For the year 1996, out of the 1,206 complaints received, only 13 were referred for disciplinary action, 2 for criminal action and 680 investigations were still continuing.

115. With respect to the rules and regulations relating to prison officers in their treatment of persons in custody, the Prison Service (Code of Conduct) Regulations 1990 (made by the President under section 30 of the Prison Service Act, chapter 13:02), in regulation 20, provides that an officer commits an act of misconduct and is liable to such punishment as is prescribed by regulation 110 (1) of the Public Service Commission, (h) if he uses obscene, insulting or abusive language to a prisoner; if he deliberately acts in a manner calculated to provoke a prisoner; or if in dealing with a prisoner he uses force unnecessarily or, where the application of force to a prisoner is necessary, he uses undue force. It is an offence under the Prisons Act, chapter 13:01, section 12, for any unauthorized person to hold intercourse or interfere with a prisoner while in any prison or public place; that person is liable on summary conviction to a fine of $200.

116. Constitutional rights are afforded to all persons, including persons serving sentences of imprisonment and those under sentence of death. Accordingly, it is open to these persons to seek constitutional or other redress, if they are being subjected to any form of cruel and unusual treatment. The rules and regulations governing the treatment of prisoners, including prisoners under sentence of death, are contained in the Prisons Rules, made under the West Indian Prisons Act, 1838, as amended.

117. With respect to the treatment of persons under sentence of death, prison conditions in Trinidad and Tobago came under scrutiny by the Judicial Committee of the Privy Council, in a recent appeal from the Court of Appeal of Trinidad and Tobago, namely Thomas & Hilaire v. The Attorney-General P.C. No 60 of 1998. In that case the Privy Council held that the question whether or not the conditions in which the appellants were kept amounted to cruel and unusual treatment was a value judgment in which it was necessary to take account of local conditions both within and outside prison. In this case their Lordships refused to depart from the careful assessment of the prison conditions made by the local Court of Appeal.

118. The Court of Appeal in that matter, in a judgment delivered by the learned Chief Justice of Trinidad and Tobago, took judicial notice of the substantial number of people in this country who live in premises that are very cramped and overcrowded, and do not have the benefit of plumbing or electricity. The Chief Justice noted that a new maximum security prison has been completed and when it is commissioned, it will serve to relieve much of the overcrowding and the understaffing that now exist in the prison system. Further, the Chief Justice observed that although he did not consider the conditions under which condemned prisoners were now kept in the State Prison as satisfactory or acceptable, those conditions fell far short of what could properly be described, in the context of local conditions, as cruel and unusual punishment.

119. Since the decision of the Court of Appeal in the Thomas & Hilaire matter, the State Prison in which death row inmates are housed, has recruited officers from its other stations in the prison service in order to ensure that prisoners under sentence of death are taken out of their cells for fresh air and exercise on a more frequent basis. In September 1998, a new maximum security prison was opened at Golden Grove with a capacity to hold approximately 2,100 inmates. This new facility is expected to relieve the problem of overcrowding. There are at present 376 inmates at this facility. The facility is being occupied on a phased basis.

120. Prisoners under sentence of death have their own cells but they are able to see and speak with prisoners in the adjacent and opposite cells. These prisoners are not kept in solitary confinement. The State prison is equipped with radio speakers and the radio is turned on at 6 a.m. every morning and turned off at 9 p.m. every night. This provides condemned prisoners with access to information concerning current events and sporting news.

121. Solitary confinement is permissible as a form of punishment for all prisoners, other than prisoners under sentence of death, who breach the prison rules and regulations. On the authority of a Superintendent of Prisons, a prisoner can be kept in solitary confinement for a maximum of 14 days and on the authority of the Commissioner of Prisons, a maximum of 21 days.

122. Medical and scientific experimentation on prisoners is strictly prohibited.

123. In terms of the complaint mechanism for prisoners, a prisoner who has a complaint may seek an audience with the Supervisor of Prisons and if not satisfied, he may seek redress up to the rank of the Commissioner of Prisons or even seek the assistance of the Inspector of Prisons. The Supervisor is required to note any complaints or requests of prisoners in the Prison Request Book. There are also two welfare officers assigned to prisoners in the State Prison. These welfare officers listen to prisoners' complaints and try to assist the prisoners. If they cannot handle the complaints themselves, the welfare officers will refer the complaints to the

Commissioner or Deputy Commissioner of Prisons. Externally, prisoners are permitted to seek the assistance of the Ombudsman or they may have their legal representative intercede on their behalf. Additionally, prisoners are free to take legal action against the State for infringements of their constitutional and other legal rights.

124. All inmates at the State Prison, whether on remand or death row, are permitted family visits. In the case of persons under sentence of death, they are allowed two 15-minute visits per week with friends or family. In almost all cases, these visits take place outside the cells, in the visiting room of the prisons. Prisoners under sentence of death are also permitted unlimited visits by their attorneys-at-law and these visits take place in the barrister's room. In the case of other prisoners, persons serving a sentence of less than six months are permitted one 15-minute visit every eight weeks; persons serving sentences between six months and two years are permitted one 30-minute visit every six weeks; and persons serving sentences over two years are permitted one 45-minute visit every four weeks.

125. The Mental Health Act, No. 30 of 1975, chapter 28:02, regulates the admission, care and treatment of persons who are mentally ill. The Act provides that it is an offence for any person in charge of a patient or person suffering from a mental disorder, or an officer of the staff of a psychiatric hospital or home, to ill-treat or wilfully neglect such a person who is under his care and protection. A person guilty of such an offence is liable to a fine and to imprisonment ranging from six months to two years.

126. Under the Mental Health Act, it is also an offence for any person on the staff or otherwise employed at a psychiatric hospital or home, to have sexual intercourse with a person who is a patient or is suffering from a mental disorder. A person found guilty of this offence is liable to imprisonment.

127. The St. Ann's Psychiatric Hospital is the largest psychiatric hospital in Trinidad and Tobago with a population of 900 patients and 50,000 out-patients. In this hospital solitary confinement is used only for violent and aggressive persons. Only a qualified doctor can recommend that someone be placed in solitary confinement. There are, however, certain criteria to be followed by medical personnel when placing someone in solitary confinement. Some of the wards have annexes or rooms in which patients can be placed in solitary confinement. These rooms have only a mattress and do not contain any furniture or sheets or anything that a patient can use to harm or injure himself. These rooms measure approximately 10 feet in width and height. There are windows with protective bars in front and an observation door. Nurses are assigned to monitor and observe persons in solitary confinement on a 24-hour basis. The patients in solitary confinement are usually medicated. Although there are no strict time limits for solitary confinement, once a patient has been sedated, he can be removed from such confinement. In practice this occurs within a period of 12 to 72 hours.

128. Corporal punishment is strictly prohibited in psychiatric institutions. In behaviour therapy there is a reward system which sets limits on behaviour. If a patient is behaving in an anti-social manner the person may be confined to his particular ward until his behaviour improves. There are open and locked wards. If a patient on an open ward runs away, he is later placed in a locked ward for a negotiable period of time.

129. If a patient in a psychiatric hospital complains about maltreatment to a doctor, the complaint is recorded in an incident report book. The complaint will then be investigated by the hospital director who will forward his findings to the Ministry of Health for further action.

130. With respect to scientific and medical research testing of patients at the Psychiatric Hospital, there is an Ethics Committee comprising the Medical Chief of Staff of the Psychiatric Hospital, as chairman, and all specialist medical officers on the staff. A person or organization seeking permission to do a research project is required to submit a proposal to the chairman of the Ethics Committee, who discusses the proposal with all the medical personnel. If approval is given by the Ethics Committee, the patient is required to give his consent to the scientific or medical testing or research. The Hospital operates in accordance with the Nuremberg Code and the Helsinki Declaration.

Article 8

131. Slavery was abolished in Trinidad and Tobago in 1838.

132. By law a sentence of imprisonment can be imposed by a competent court on a person, with or without hard labour. Under the Prisons Act, chapter 13:01, section 6, any person who is sentenced to imprisonment with hard labour may lawfully be kept and worked at hard labour on any highway, road, street, or public place or in any other place which the Minister may authorize and appoint. In practice, persons sentenced to hard labour are placed to work in trade shops or in outgangs. Unconvicted persons who are remanded in court pending the determination of a charge are not called upon to work. Other convicted inmates are assigned to do provisional labour as detailed by the prison administration. Persons convicted of minor offences and serving a sentence of imprisonment are classified as first division prisoners. First division prisoners are not called upon to work. However first division prisoners are free to volunteer for hard labour as this entitles them to early release. Under rule 285A of the Prison Rules (Legal Notice 64 of 1991), a person sentenced to imprisonment for a period not exceeding 12 months may become eligible for discharge when a portion of his term (not exceeding one half of the prison sentence) has yet to run.

133. The Sexual Offences Act, No. 27 of 1986, section 24, provides that a person who for the purposes of gain, exercises control, direction or influence over the movements of a prostitute in any way which shows that the person is aiding, abetting or compelling prostitution, is guilty of an offence and is liable, on conviction, to imprisonment for five years. Section 19 provides that a person who detains another against that other's will, in any premises or any brothel, with the intent that the person detained may have sexual intercourse with any person, is guilty of an offence punishable by imprisonment for 10 years. Under section 18 of the Act, a person who by threats or intimidation procures another to have sexual intercourse with any person, is guilty of an offence punishable by imprisonment for 15 years.

134. Trinidad and Tobago has adopted the Convention for the Suppression of the Traffic in Women and Children, concluded in Geneva on 30 September 1921 and amended by the Protocol signed at Lake Success, New York, on 12 November 1947.

135. The Republic has also adopted the International Agreement for the Suppression of the White Slave Traffic, signed at Paris on 18 May 1904 and amended by the Protocol signed at Lake Success, New York, on 4 May 1949.

Article 9

136. This article is mirrored in section 4 of the Constitution, which recognizes the right of an individual to life, liberty and security of the person and the right not to be deprived thereof, except by due process of law.

137. Under the Police Service Act, chapter 15:01, a police officer may arrest a person without a warrant:

(i) Any person who is charged by another person with committing an aggravated assault, in any case where such police officer has good reason to believe that such assault has been committed, and that by reason of the recent commission of the offence, a warrant could not have been obtained;

(ii) Any person who commits a breach of the peace in his presence;

(iii) Any person who obstructs a police officer while in the execution of his duty, or who has escaped or attempts to escape from lawful custody;

(iv) Any person in whose possession anything is found which may reasonably be suspected to be stolen property or who may reasonably be suspected of having committed an offence with reference to such thing;

(v) Any person whom he finds lying or loitering in any highway, yard or other place within the hours of 8 p.m. and 5 a.m. and not giving a satisfactory account of himself or whom the officer suspects, upon reasonable grounds, of having committed or being about to commit an arrestable offence;

(vi) Any person found between the hours of 8 p.m. and 5 a.m. having in his possession, without lawful excuse, any implement of housebreaking;

(vii) Any person for whom he has reasonable cause to believe a warrant has been issued; and

(viii) Any person who within view of any such police officer shall offend in any manner against any law, and whose name and residence is not known to such police officer and cannot be ascertained by him.

138. Under the Summary Courts Act, chapter 4:20, section 104, a person who is found committing any summary offence may be taken into custody without warrant, by any police officer. It is the duty of every police officer, when effecting an arrest, to inform the arrested person of the reason for his arrest. The only exception to this rule is when the reason for the arrest should be obvious to the accused. If an arrest is based on the authority of a warrant, the

warrant must be read to the accused at the time of his arrest. If the warrant is not in the possession of the officer at the time of arrest, it should be read to the accused as soon as practicable thereafter. In this jurisdiction the police do not have the authority to detain anyone for questioning against their will. It is only if a person is lawfully arrested that he may be taken into custody against his will.

139. The Judge's Rules and Administration Directions, adopted in 1965 for the guidance of police officers, provide inter alia that, when a person has been arrested without a warrant, as soon as a charge had been laid, the accused person should be given a copy of the entry in the charge sheet giving particulars of the charge. So far as possible, the particulars of the charge should be stated in simple language, so that the accused person may understand it. The written notice should include a caution that the accused is not obliged to say anything unless he wishes to do so. The Administrative Directions in the appendix to the Rules provide that a person in custody should be allowed to speak on the telephone to his solicitor or counsel or to his friends, provided that no hindrance is reasonably likely to be caused to the processes of investigation or administration of justice by his doing so. He should be supplied on request with writing materials and his letters should be sent by post or otherwise without delay. Additionally, telegrams should be sent at once, at the person's expense. Persons in custody should be informed orally of the rights and facilities available to them, but in addition, notices describing them should be displayed at convenient and conspicuous places at police stations and the attention of persons in custody should be drawn to these notices.

140. The Indictable Offences Act, chapter 12:01, section 10 provides that every accused person is entitled as of right to the presence and assistance of his legal adviser, and while under remand shall be allowed access to his legal adviser at all times.

141. In practice, upon arrival at a police station every person taken into custody is entitled, after a search is done to ensure that there is nothing harmful or dangerous in his possession, to a free telephone call to his attorney-at-law, friend or family. Any additional calls must be paid for by the accused. Notice of this right to contact a lawyer, friend or family member is required to be posted in a conspicuous place in the charge room of all police stations throughout the country.

142. The Bail Act No. 18 of 1994 amended the law relating to the release from custody of persons in criminal proceedings in this jurisdiction. The Act provides in section 5 that the court may grant bail to any person charged with any offence other than murder, treason, piracy or hijacking and any offence for which death is the penalty fixed by law. However, the Act provides that a court shall not grant bail to a person charged with an offence listed in Part II of the First Schedule to the act, who has been convicted on three occasions arising out of separate transactions of any offence, or any combination of offences listed in the First Schedule, Part II, unless on application to the judge he can show sufficient cause why his remand in custody is not justified. The list of these offences includes trafficking in narcotics or possession of narcotics for the purpose of trafficking, possession of imitation firearms in pursuance of a criminal offence, rape, sexual intercourse with a female under 14; buggery; shooting or wounding with intent to do grievous bodily harm, robbery with aggravation and receiving stolen goods.

143. Under the Bail Act, where the offence of which the defendant is accused is punishable with imprisonment, it shall be within the discretion of the court to deny bail in the circumstances

set out in section 6 (2). The considerations for the exercise of the court's discretion not to grant bail are set out in section 6 (3) of the Act. Under section 11 of the Act, where a magistrate's court grants or refuses bail in criminal proceedings or imposes conditions in granting bail in criminal proceedings, the High Court may, on application by an accused person, refuse bail or vary the conditions.

144. Under the Summary Courts Act, chapter 4:20, section 105, as amended by the Bail Act 1994, on a person being taken into custody for a summary offence without a warrant, any police officer above the rank of corporal, may in any case, and shall, if it will not be practicable to bring such person before a magistrate within 24 hours after he was taken into custody inquire, into the case, and unless the offence appears to such police officer to be of a serious nature, grant him bail in accordance with the Bail Act, 1994, subject to a duty to appear before a court at such time and place as the police officer appoints.

145. Further, section 107 of that Act, as amended by the Bail Act 1994, provides that a magistrate or justice on issuing a warrant for the arrest of any person may grant him bail by endorsing the warrant for bail. A direction for bail endorsed on the warrant of arrest shall state that the person arrested is to be released on bail subject to a duty to appear before such court at such time as may be specified. The endorsement shall fix the amount in which any surety is bound. Where a warrant has been endorsed for bail, then on the person being taken to a police station on arrest, the officer in charge of the police station is required to release the person from custody, subject to his approving any surety tendered in compliance with the endorsement.

146. Under the Indictable Offences Act, chapter 12:01, section 10, when any person is apprehended upon a warrant, he shall be brought before a magistrate as soon as practicable after he is arrested, and the magistrate shall either proceed with the preliminary inquiry or postpone the inquiry to a future time, in which latter case, he may grant him bail or commit him to prison. Section 28 (3) provides that whenever the preliminary inquiry is for any cause adjourned, the magistrate may upon such adjournment remand the accused person in custody by committing him to prison, and the time fixed for the resumption of trial shall be the time at which he is required to appear or be brought before the court in pursuance of the remand. The amount of bail to be taken in any case is by section 36, in the discretion of the magistrate or the court or the judge, but no accused person shall be ordered to give excessive bail.

147. Under the provisions of the Children Act (No. 4 of 1925), chapter 46:01, section 10, a police officer may arrest without warrant a person who, within his view, has committed an offence under that Act, or whom the officer has reason to believe has committed an offence of cruelty. However section 10 (2) provides that where a constable arrests any person without a warrant under this section, unless in his belief the release of such person would tend to defeat the ends of justice or cause danger to the child, he shall release the person arrested on bail in accordance with the Bail Act, 1994. Under section 71 of this Act, where a person apparently under the age of 16 years, is apprehended with or without a warrant, and cannot be brought forthwith before a magistrate, the officer in charge of the police station shall, unless the charge is one of homicide or unless the officer has reason to believe that the release of such person would defeat the ends of justice, release such person on bail in accordance with the Bail Act 1994.

148. In terms of the detention of persons suffering or suspected of suffering with mental illness, section 13 of the Mental Health Act, chapter 28:02, prescribes that the psychiatric hospital director may, by order of a judge or magistrate, admit to a hospital any person named in the order; however, no person who has been thus admitted shall be kept in hospital for more than 14 days without a further order from the court.

149. There is a Psychiatric Hospital Tribunal established under the Mental Health Act, which consists of the Chief Medical Officer, the Chief Magistrate and three medical practitioners. This Tribunal is required under the Act to review, not less than once a year, the case of each medically recommended patient who has been hospitalized for more than one year, and to review every six months, the case of a patient who has been hospitalized for more than six months pursuant to an order of the court or an order of the Minister of National Security.

150. The Mental Health Act, section 15, provides that a person found wandering at large on a highway or in any public place and who by reason of his appearance, conduct or conversation, a mental health officer has reason to believe is mentally ill and in need of care and treatment in a psychiatric hospital or ward, may be taken into custody and conveyed to such hospital or ward for admission for observation in accordance with this section.

151. With regard to deprivation of liberty for immigration control, the Immigration Act, chapter 18:01, section 14, provides that the Minister may issue a warrant for the arrest of any person in respect of whom an examination or inquiry is to be held or a deportation order has been made and may order the release of any such person. Further, the Minister, the Chief Immigration Officer or a special inquiry officer may make an order for the detention or direct the detention of such person. Every police officer and every immigration officer may under section 15 of the Act, without the issue of a warrant, arrest and detain for an inquiry or for deportation, any person who upon reasonable grounds is suspected of being a person referred to under section 9 (4) or section 22 (1) (i) of the Act, and the Chief Immigration Officer may order the release of any such person. Section 16 of the Act provides that any person in respect of whom an inquiry is to be held or a deportation order has been made may be detained pending inquiry at an immigration station or other place satisfactory to the Minister. Section 17 of the Act provides that a person taken into custody or detained may be granted conditional release or an order of supervision in the prescribed form under such conditions as may be satisfactory to the Chief Immigration Officer. Section 24 of the Act states that an inquiry by a special inquiry officer shall be separate and apart from the public. The person concerned shall be entitled to conduct his case in person or by counsel or solicitor, or may be assisted in conducting his case at the hearing by any other person with leave of the special inquiry officer. Regulation 25 of the Immigration Regulations, provides that at the commencement of an inquiry, where the person concerned is not represented by counsel or by a relative or friend, the presiding officer shall inform the person of his right to be represented and, upon the request of such person, the inquiry should be adjourned for this purpose. Further, where a person being examined at an inquiry does not understand or speak the language, the presiding officer shall adjourn the hearing and obtain an interpreter for the assistance of such person.

152. With respect to the right of persons subject to unlawful arrest to compensation, in practice the majority of persons who have been illegally detained seek compensation in tort for unlawful arrest and false imprisonment. Many persons who are still in custody or have been

released from custody also seek constitutional redress. Constitutional motions are heard in the civil courts on a priority basis and the courts are empowered to award monetary compensations where there have been violations of constitutional rights. Applications for writs of habeas corpus are less common. Less than 50 habeas corpus applications appear to have been filed in the last 10 years. Of these 50, several were filed by insurrectionists detained after the failed 1990 coup attempt against the Government. Since 1992, approximately 200 writ actions against the State have been filed in respect of assault and battery and/or wrongful arrest and/or false imprisonment and/or malicious prosecution. With the passage of the Habeas Corpus Amendment Act, (No. 9 of 1996), persons who have unsuccessfully applied for writs of habeas corpus, whether civil or criminal, will now have the right of appeal to the Court of Appeal and to the Judicial Committee of the Privy Council.

153. With regard to pre-trial detention, the right of an accused person to be tried without delay is not a constitutional guarantee in this jurisdiction. This was acknowledged by the Judicial Committee of the Privy Council in the case of Director of Public Prosecutions v. Tokai (1996) AC. 856, in which it held that the provisions of the Constitution of Trinidad and Tobago afforded persons charged with a criminal offence, the right to a fair trial, but not the right to a speedy trial or a trial within a reasonable time. In that matter it was held that whether a person had been prejudiced by delay in his trial was primarily for the trial judge to decide, not a court in constitutional proceedings. In spite of this ruling, the Government of Trinidad and Tobago remains concerned about protracted pre-trial delay and mechanisms have been instituted to minimize, as far as resources would allow, the length of pre-trial delay in these matters. In an effort to ensure that sufficient matters were listed for criminal trial, from November 1997, the Registrar of the High Court has taken over from the Director of Public Prosecutions the responsibility for preparing the case lists for the Assizes. This has resulted in more matters being listed for trial than in previous years. Additionally, four new High Court judges and three Appeal Court judges have been appointed. The terms and conditions of Judges were also improved in 1997, to attract more qualified practising attorneys-at-law to the bench. With respect to criminal appeals, up to 1992 the average time between conviction and determination of a murder appeal was five years and seven months. Since then the Court of Appeal has consistently met the target, set by the Judicial Committee of the Privy Council, of hearing and determining murder appeals within one year from the date of conviction. At present there are no murder appeals pending other than those listed for hearing. In the 1997/1998 law terms 141 criminal appeals were heard and determined.

Article 10

154. In terms of the instruction and training given to police officers involved in the custody or treatment of individuals subject to any form of arrest or detention, police officers are trained to treat every suspect or accused person as a human being in a dignified way. From time to time lectures in which these principles are reinforced are given by senior police officers for officers under their command, as a form of ongoing training.

155. With respect to the custody and care of prisoners in police custody, this is governed by the Police Service Regulations, Part VII. These regulations provide inter alia that a police matron shall be appointed to each police station and she shall be entrusted with the custody of female prisoners. No cell in which a female prisoner is confined shall be opened except by or in

the presence of the police matron or a woman police officer. Female prisoners can only be searched by the police matron or woman police officers. Prisoners shall be fed three times daily at 7.30 a.m., 12.30 p.m. and 5.30 p.m. Prisoners may be supplied with food from outside, but all such food shall be examined by the police officer on duty. The legal adviser of a prisoner may be allowed to communicate with the prisoner at the police station but the prisoner must be kept in sight by a police officer during such communication. When a prisoner is ill, the police officer in charge of the charge room shall immediately notify the appropriate government medical officer.

156. The treatment of prisoners is regulated by the Prison Rules made under the West Indians Prisons Act, 1838 of the United Kingdom. A prisoner is defined as including every inmate of any prison detained therein under sentence or conviction for any offence, or under committal or remand pending trial or investigation on a charge for any offence. The existing Prison Rules are presently under review.

157. Under the Prison Rules, the prison medical officer is responsible for the general care of the health of the prisoners. Upon admission, prisoners are examined by the prison's medical officer. Under rule 82, when the medical officer has reason to believe that a prisoner's health is likely to be injuriously affected by prison discipline or treatment, he shall report the case in writing with such recommendations as he thinks proper. Under rule 89, the medical officer is required to submit a recommendation to the Superintendent for separating from other prisoners any prisoner suffering or suspected of suffering from any infectious or contagious disease. The medical officer shall prescribe where necessary special diets and extra food for sick prisoners. Prisoners under sentence of death receive visits from prison medical doctors in their cells on a regular basis. An infirmary officer visits the divisions in which prisoners under sentence of death are kept twice per day to treat minor complaints and to give out any prescribed medication. Any person who complains of being unwell is taken to the prison infirmary for treatment. For other prisoners, a prison medical officer visits the prison every day to treat prisoners with medical complaints. When the prison medical officer is not on duty, trained infirmary officers attend to minor complaints of prisoners. If specialist medical attention is needed or if there is an emergency, arrangements will be made for treatment to be administered at government health institutions. If a prisoner exhibits signs of mental illness, that prisoner will be assessed by a forensic psychiatrist.

158. In terms of the segregation of accused persons from convicted ones, although there is no separate facility for accused prisoners, these prisoners are kept at different locations in the prisons and are kept apart from convicted prisoners. There is a separate Women's Prison, which currently houses approximately 151 inmates.

159. There are various programmes for the social rehabilitation, vocational guidance and education of prisoners. Such activities include the following:

Agriculture, animal husbandry	Vocational	Sports	Cultural	Religious	Social welfare
Pigs, sheep, goat, cows, and fish farming Growing of green and ground vegetables	Carpentry Shoemaking Upholstery Electrical-installation Cake decoration Food preparation Pottery Welding Plumbing Painting Auto-mechanics Joinery Handicraft Masonry	Football Basketball Cricket Rugby Indoor: Chess Dominoes Table tennis Draughts	Calypso compositions Eid and Divali celebrations Chutney Concerts Drama	Roman Catholic Hindu Muslim Anglican Presbyterian Seventh-Day Adventist Baptist Non-conformist (Salvation Army)	Drug rehabilitation Counselling Pre-release

160. In terms of the re-education of convicted persons, classes are conducted at prison institutions for all inmates other than inmates on death row. Prisoners have access to several educational programmes, including adult literacy, primary school leaving certificate courses, courses at the Caribbean Examinations Council and General Certificate of Education levels, advanced level courses and courses leading to qualifications in Tailoring and Electrical Technology. The Government provides free instruction in these subjects and arranges for the prisoner to sit the required examination under supervision free of charge. The prisons have a correctional education programme for convicted persons aimed inter alia at developing critical thinking, value clarification and moral reasoning.

161. Attempts are also made by prison welfare officers to secure job placements for inmates subsequent to their release.

162. There is a drug rehabilitation programme for prisoners. This programme was implemented since many persons entering the prison are convicted on drug related charges. Over 100 inmates have personally benefited from this programme to date. The programme is supervised by prison and welfare officers and is now an integral part of the correctional programme.

163. Under the Children's Act, chapter 46:01, section 73, the Commissioner of Police shall make arrangements for preventing, so far as practicable, a child or young person, while being detained in a police station from associating with an adult, other than a relative, charged with an offence. Section 78 (4) provides that a young person sentenced to imprisonment shall not be allowed to associate with adult prisoners. Under section 78 of the Act, a young person (between 14 and 16) shall not be sentenced to imprisonment for any offence, unless the court certifies that the young person is of so unruly a character that he cannot be detained in a place of detention. However a young person sentenced to imprisonment shall not be allowed to associate

with adult prisoners. Under section 87 (3) of the Act, provision shall be made for preventing persons apparently under the age of 16 years whilst being conveyed to or from court, or whilst waiting before or after their attendance in court, from associating with adults charged with any offence, other than an offence with which the person apparently under the age of 16 years is jointly charged.

164. Young male persons between the ages of 16 and 18 who have been convicted of an offence, other than murder, which is punishable by a term of imprisonment in the case of an adult, may be sent to the Youth Training Centre (YTC), a facility in the Prison Service for persons in this age group. At present there are 233 persons detained in the YTC. Young offenders are sentenced to the YTC for a period not less than three years, but no more than four years. The YTC is located in a separate facility within the compound of one of the State prisons. Young persons at the YTC do not have any contact with adult offenders. The YTC institution has as its principal philosophy the process of reform and training in order to enable persons committed to its custody to return and function beneficially in society. The aims and objectives of the institution are, inter alia, to provide secure custody and physical care, to foster mature development, to minimize the detrimental effects of being incarcerated and to provide constructive and satisfying activities, including academic instruction and technical training.

165. The programmes at the YTC are structured into three phases, namely, orientation, mainstream and pre-release. The orientation phase is of six months' duration and includes academic assessment, vocational assessment, welfare counselling, adolescent development, self-awareness, medical evaluation, physical education, spiritual self-awareness, drug counselling and cultural programmes. After the first three months of the inmate's stay at the institution, the inmate automatically achieves his penal grade. He is then placed before the Superintendent of the YTC every three months to be considered for grade promotion. Data and reports will be submitted from the various sections. When an inmate acquires a fourth conduct grade he will be eligible for weekend leave. To qualify, the inmate must have no outstanding court matters and the welfare officer must investigate the accommodation where the inmate wishes to spend the weekend. The Superintendent then makes a decision on approving weekend leave. A day pass can also be granted to inmates of the YTC but the inmate has to be escorted by a prison officer. The mainstream phase is of two years' duration. The activities in this phase include programmes in learning disability, primary school education, library, General Certificate of Education subjects, vocational subjects, trade, agriculture, sports, recreation, cultural, counselling, health education, career enhancement, hobbies and art and craft. The pre-release phase is geared towards preparing the inmates for discharge. The activities in this phase include academic and vocational activities, a post-training support programme, small business microentrepreneurship, counselling, on the job training, career enhancement, welfare, leadership skills, anger replacement and moral education. The licence system replaces the remission system in adult institutions, and it is similar to the parole system abroad. A YTC inmate has to achieve a seventh conduct grade before he can be placed before a discharge board to be considered for a discharge.

166. Psychiatric hospital services in Trinidad and Tobago are currently divided into nine catchment areas. Six are based at the St. Ann's Hospital and three others operate from units at the Port-of-Spain, San Fernando and Scarborough hospitals, providing only acute in-patient care. The St. Ann's Hospital is the largest psychiatric hospital in Trinidad and Tobago with a

population of 900 patients and 50,000 outpatients. This hospital has 27 wards in several buildings scattered over 5 acres of land. Sixty per cent of the in-patient population is male and 40 per cent is female. Children are placed on a separate ward. Psychiatrists visit the wards every day, except on days when the psychiatrist is visiting a community clinic, which is done to facilitate outpatients who have left the institution, approximately twice a week. Some of the problems experienced by the hospital are overcrowding and chronic shortages of nursing staff. An attempt has been made to address these deficiencies through the implementation of the Regional Health Authorities Act of 1994. A revised mental health plan is currently before the country's Cabinet. It takes into account global changes and focuses on mental health promotion, prevention, treatment and rehabilitation.

167. Treatment in psychiatric hospital settings is provided by a multidisciplinary team. Treatment is reformative not pur 'tive. Patients are assessed by a psychiatrist and a social worker upon admittance. There may also be an occupational assessment. Some patients are given medical tests. In addition to drug therapy, which is the major approach to treatment, a limited amount of ECT or shock therapy is given. There is a variety of supportive counselling and minimal formal psychotherapy. Links have been developed with non-governmental organizations, which offer support. When patients leave the institution they are assigned to community clinics. Seventy-two outpatient clinics are held each month across the country. Care of these patients in the outpatient setting is provided by a team comprising psychiatrists, social workers and mental health officers. These clinics are also used for giving depot medication.

168. A special clinic for children is located at the Eric Williams Medical Sciences Complex. First established in 1975, it sees approximately 400 new referrals each year. Each child is assessed by a multidisciplinary team.

169. There is a separate ward at the St. Ann's Hospital for patients who have committed murder. Under the Mental Health Act, chapter 28:02, the Minister of National Security, on receipt of the medical certificates of two medical practitioners, one of whom shall be a psychiatrist, to the effect that a prisoner is suffering from mental illness, may by order direct that the prisoner be transferred to a hospital and that he be kept there, until the psychiatric hospital director is satisfied that he is no longer in need of care and treatment in a hospital.

170. There are about 18 patients with AIDS at the St. Ann's Hospital and the general rule is that these patients are to be treated for their psychiatric problems in the same way and together with normal psychiatric patients.

171. A draft charter of patient's rights and obligations is currently being formulated by the Ministry of Health. It is however still in the process of revision, following a series of recently concluded consultations. The rights identified in the draft charter to which each patient shall be entitled include the following:

(i) Impartial access to treatment or available lodging or appropriate medical and personal care based on personal needs and without reference to gender, religion, race, social class or national origin;

(ii) Right to privacy with respect to his/her person and to information;

(iii) Right to personal safety;

(iv) Freedom from abuse;

(v) Right to obtain from those responsible for the coordination of his/her care, current information on the diagnosis, treatment, risks, alternatives and prognosis;

(vi) Right not to be subjected to any procedure without his/her voluntary informed consent, or that of his/her legally authorized representative;

(vii) Right to refuse treatment;

(viii) Right to manifestation of his/her cultural and/or religious expressions while admitted.

Article 11

172. Inability to fulfil a contractual obligation is not punishable with imprisonment in this jurisdiction. Deprivation of liberty may only follow the violation of a civil or criminal law. Under the Debtors Act, (chap. 8:07, section 3), persons shall not be arrested or imprisoned for making default in payment of a sum of money, subject to the exceptions listed. These exceptions include default in payment of a penalty or sum in the nature of a penalty, other than a penalty in respect of a contract; default in payment of any sum recovered summarily before a magistrate; default by a trustee or person acting in a fiduciary capacity and ordered to pay by a civil court any sum in his possession or under his control; default by a solicitor in payment of costs when ordered to pay costs for misconduct and default in payment for the benefit of creditors of any portion of a salary or other income. But no person shall be imprisoned, in any case excepted from the operation of this section, for a period in excess of one year.

173. However, the Negotiable Instruments (Dishonoured Cheques) Act, No. 9 of 1998, provides in section 3 that a person commits an offence when he obtains property or services by use of a dishonoured cheque. A dishonoured cheque is defined in the Act as a cheque, which cannot be covered because of insufficient funds. A drawee is defined in the Act as any institution conducting the business of receiving deposits of money from the public on current account. The drawer is defined as the person whose name appears on a cheque. A drawer has insufficient funds under the Act when he has no account, no funds in the account, an amount of funds less than that needed to cover the cheque, or no credit facilities to cover the cheque. A person "passes" a cheque when, as a payee, holder or bearer of a cheque which has been or purports to have been drawn and uttered by another person, he endorses it and delivers it, for a purpose other than collection, to a third person who thereby acquires a right with respect to the cheque. Section 3 of the Act provides that a person obtains property or services by use of a dishonoured cheque when:

(i) As a drawer or representative drawer, he obtains property or services by uttering a cheque knowing that he or his principal has insufficient funds with the drawee to cover it;

(ii) Payment is refused by the drawee upon presentation;

(iii) As a payee, holder or bearer he passes a cheque knowing that the drawer has insufficient funds with the drawee to cover that cheque;

(iv) As a drawer he obtains property or services by uttering a cheque knowing that he or his principal, at the time of utterance, intends, without the consent of the payee, to stop or countermand the payment of the cheque, or otherwise to cause the drawee to disregard or dishonour the cheque, and payment is refused by the drawee upon presentation; or

(v) He obtains property or services by passing a cheque knowing that payment of the cheque has been stopped or countermanded, or the drawee of the cheque may disregard or dishonour the cheque, and payment is refused by the drawee upon presentation.

174. A person who commits an offence under section 3 referred to above, is liable under section 5 of the Act, upon summary conviction, to a fine in an amount equivalent to 10 times the value of the cheque and to imprisonment for five years.

175. Under section 7 of that Act, where a person obtains property or services by uttering or passing a cheque and the uttering or passing is not accompanied by a bona fide belief that there are sufficient funds to his credit to cover the cheque, he shall not be liable to be prosecuted if he pays to the payee, in cash, the amount of the cheque or he makes arrangements with and satisfactory to the drawee or payee to satisfy the amount represented by the cheque, within a period of 10 days after he receives notice of protest of the dishonour from the drawee. No prosecution shall be commenced until the expiration of that period.

Article 12

176. Section 4 (g) of the Constitution recognizes the right of an individual to freedom of movement without discrimination on any grounds. There are no restrictions on an individual's freedom to choose his place of residence. A person's place of residence is defined under the Representation of the People Act, chapter 2:01, rule 66, as that place which has always been, or which he has adopted as, the place of his habitation or home, to which place, when away therefrom he intends to return. Trinidad and Tobago is divided into registration areas for the purpose of voting in parliamentary and local government elections. Under this Act, persons are registered in the registration unit in which they have their place of residence but there is no restriction on change of residence. The registration rules provide in rule 43, that a registered person who has changed his place of residence from one polling division to another, or from one address to another, shall give notice to the registration officer in the area of the change of residence.

177. Upon entry into the country, a foreigner is required to provide the Immigration Department with his intended address in Trinidad. If a foreigner is here as a tourist and his address changes, he is not required to inform the Immigration Department of his change of address. However, if a foreigner is working here or is applying for residence, the Immigration Department should be notified of any change of address.

178. All persons can freely leave this jurisdiction provided that they have a valid travel document. However a person may be prevented from leaving the jurisdiction by the immigration authorities if the Immigration Department has been informed that there is an outstanding warrant of arrest against that person, or if a state of emergency has been declared and such an order has been made by the person in whom such power is vested. Other than a valid travel document and an airline ticket, no other documents are required to be produced before a person is permitted to leave the country. All persons leaving the jurisdiction, including citizens, are however, required to pay a departure tax of TT$ 75 and a security tax of TT$ 25.

179. All citizens and residents of this country are entitled to apply for and be granted travel documents. There are very few instances when a person lawfully entitled to a travel document can be denied this. One such instance is when the court informs the Immigration Department that a person's passport has been surrendered by order of the court and the court instructs the Immigration Department not to issue any new travel document to that person until further notice. Statistics show that, in 1998, a total of 51,176 passports and 671 other travel documents were issued by the Trinidad and Tobago Immigration Department.

180. A person's passport may be withheld only in very limited instances. One instance would be when a person is financially indebted to the Government. An example of this is when a Trinidad and Tobago citizen finds himself destitute in a foreign country or where a deportation order is made against a Trinidad and Tobago citizen in a foreign country, and the person does not have sufficient funds to pay for the return trip home. In these cases the Government will bear the cost of the return airfare and incidental expenses, on the condition that the person repays this debt to the Government. If, on return to Trinidad and Tobago, this person attempts to leave the jurisdiction without repaying this debt, the person's passport may be withheld until the debt is satisfied. However this policy may be waived if there are extenuating circumstances or if there is a medical emergency. In such cases the person may appeal to the Minister for Foreign Affairs in whose name travel documents are issued, or to the Chief Immigration Officer. However there have been very few instances where passports have been withheld on this basis.

181. With respect to the requirements for the admission of aliens into the country, all foreigners entering the country must be in possession of the following:

(i) A valid passport or travel document;

(ii) A return ticket to the country of his birth;

(iii) An entry visa for citizens of countries listed in the Second Schedule to the Act;

(iv) A proper address and if applicable the name of the host or family in this country;

(v) Sufficient funds to maintain their stay in the territory;

(vi) Additionally, persons who intend to work, study or preach while in the jurisdiction must be in possession of the necessary permit.

182. The Immigration Act, chapter 18:01, provides in section 4 that a citizen of Trinidad and Tobago has the right to be admitted into Trinidad and Tobago. A resident, who is not a citizen, so long as he continues to be a resident, has the right to be admitted into Trinidad and Tobago. Under section 7 (1) of the Act, resident status is lost by a person who voluntarily resides outside of Trinidad and Tobago for a continuous period of one year. Section 8 of the Act lists classes of persons prohibited from entry into Trinidad and Tobago, inter alia:

(i) Persons who are idiots, imbeciles, feeble-minded persons, persons suffering from dementia and insane persons, and who are likely to be a charge on public funds;

(ii) Persons afflicted with any infectious or dangerous infectious disease;

(iii) Persons who are dumb, blind or otherwise physically defective or physically handicapped, which might endanger their ability to earn a livelihood, or render them likely to become charges on public funds;

(iv) Persons who have been convicted of or admit having committed any crime, which if committed in Trinidad and Tobago, would be punishable with imprisonment for one or more years;

(v) Prostitutes, homosexuals or persons living on the earnings of prostitutes or homosexuals, or persons reasonably suspected of coming to Trinidad and Tobago for these or any other immoral purposes;

(vi) Habitual beggars or vagrants;

(vii) Persons who are chronic alcoholics;

(viii) Persons who are addicted to the use of any drug;

(ix) Persons who are engaged or are suspected on reasonable grounds of being likely to engage in any unlawful giving, using, inducing other persons to use, distributing, selling, offering or exposing for sale, buying, trading or trafficking in any drug;

(x) Persons who are, or have been at any time before the commencement of the Act, advocates of overthrow by force or violence of the established Government of Trinidad and Tobago or any other country, or of all forms of law, or who advocate the abolition of organized government; or who advocate the assassination of public officials;

(xi) Persons concerning whom there are reasonable grounds for believing they are likely to engage in espionage, sabotage or any other subversive activity of any kind directed against Trinidad and Tobago;

(xii) Persons who are certified by any medical officer as being mentally or physically abnormal to such a degree as to impair seriously their ability to earn a living; and

(xiii) Persons who have been reasonably suspected of engaging in treasonable activities against Trinidad and Tobago.

183. In 1998, a total of 721 foreigners were refused admission to Trinidad and Tobago. The majority of these persons were refused entry because they did not have the necessary entry visa, work permit or missionary permit, because they were in possession of fraudulent travel documents, and/or because they did not have sufficient funds to maintain their stay in the jurisdiction.

184. Under the Immigration Act, section 21, where an immigration officer, after examination of a person seeking to enter into Trinidad and Tobago, is of the opinion that it would or may be contrary to a provision of the Act or the regulations to grant admission to such person into Trinidad and Tobago, he may either make an order for the rejection of such person or cause such person to be detained pending the submission of a report to a special inquiry officer. A person, in respect of whom an order of rejection has been made, may forthwith give notice of appeal to the immigration officer. Where notice of appeal has been given, the immigration officer shall forthwith make arrangements for the appeal to be heard and determined by a special inquiry officer and may cause such person to be detained, pending the hearing, or released on such terms and conditions as he thinks fit, having regard to all the circumstances. Under section 13 of the Act, immigration officers in charge of a port of entry are deemed to be special inquiry officers. A special inquiry officer has the authority to inquire into and determine whether any person shall be admitted into Trinidad and Tobago or allowed to remain in Trinidad and Tobago or shall be deported. Any person aggrieved by a decision of a special inquiry officer may within 24 hours appeal to the Minister on the prescribed form, but the decision of the Minister is final and conclusive and shall not be questioned in any court of law. However, an appeal lies to a judge of the High Court against any rejection order or deportation order of the Minister, a special inquiry officer or an immigration officer, with respect to a person who claims to be a citizen or resident of Trinidad and Tobago or is a resident.

185. Under the Constitution, Parliament may not authorize or effect the arbitrary exile of any person. There are no reported incidents of any citizen having been banished or refused entry into Trinidad and Tobago during the reporting period.

Article 13

186. Persons who have contravened the immigration laws are subject to deportation or voluntary departure, as the case justifies.

187. Section 9 (4) of the Immigration Act details the classes of permitted entrants against whom a deportation order may be made by the Minister. Where a permitted entrant is, in the opinion of the Minister, a person who:

(i) Has been convicted of an offence and sentenced to a term of imprisonment of one or more years;

(ii) Has become an inmate of any prison or reformatory;

(iii) Was a member of a prohibited class at the time of his admission into Trinidad and Tobago;

(iv) Has since his admission become a member of a prohibited class;

(v) Remains after the expiry of the certificate issued to him;

(vi) Has escaped from lawful custody or detention under this Act;

(vii) Has come into Trinidad and Tobago with a false or improperly issued passport, visa or other fraudulent document;

(viii) Returns to or remains in Trinidad and Tobago after a deportation order has been made against him.

The Minister may at any time declare that such person has ceased to be a permitted entrant. The Minister may make a deportation order against any person who has ceased to be a permitted entrant.

188. An appeal against a deportation order shall stay the execution of that order pending a decision thereon. An appeal may be lodged against a deportation order if a person, within 24 hours, serves a notice of appeal in the prescribed form upon an immigration officer or upon the person who served the deportation order. Section 27 of the Act stipulates that all appeals against deportation orders may be reviewed and decided upon by the Minister, and the decision of the Minister shall be final and conclusive and shall not be questioned in any court of law. The Minister may cancel any deportation order, whether made by him or not. A deportation order made against a person serving a prison term shall not be executed until such time as the person has completed the sentence. A person, in respect of whom a deportation order is made, shall leave the jurisdiction in accordance with the terms of the order, and shall thereafter, so long as the order is in force, remain out of Trinidad and Tobago. A person who returns to Trinidad and Tobago in contravention of a deportation order may again be deported under the original order. A person against whom a deportation order is made shall be deported to the place from whence he came to Trinidad and Tobago or to the country of which he is a citizen or to the country of his birth. A person against whom a deportation order is made may be requested to leave the jurisdiction voluntarily, provided he complies with the conditions governing voluntary departure. The onus is on the person or his or her family or friends to purchase his return ticket if a deportation order is made against him or her.

189. In 1997, 100 persons were deported from this country and in 1998, 162 persons were deported. The majority of these persons were deported because they overstayed the certificate granted to them on entry into the jurisdiction. Other reasons for deportation included illegal entry, re-entry into the jurisdiction while a deportation order is in force and working without a valid work permit.

Article 14

190. The right "to equality before the law and the protection of the law" is recognized in section 4 (b) of the Constitution. Equality before the law has derived from the concept of a form of equality in the treatment of persons by organs of the State. This section has been held by the courts to apply both to legislation as well as administrative acts of officials. The section both guarantees and is intended to ensure that, where parties are similarly placed, they are entitled to equal treatment under the law. The expression "protection of the law" has received judicial interpretation by the Privy Council. Access to a court of justice is itself the protection of the law referred to in the Constitution and, so long as the judicial system of Trinidad and Tobago affords a procedure by which a person can seek redress, he cannot complain that he is deprived of the protection of the law.

191 Section 4 (a) of the Constitution provides that no person shall be deprived of his liberty without due process of law and section 5 of the Constitution particularizes what is included in the expression "due process of law". These are constitutional guarantees of an arrested person and include:

(i) The right to be informed promptly and with sufficient particularity of the reason for arrest;

(ii) The right to retain and instruct a legal adviser of choice and to hold communication with him;

(iii) The right to be brought promptly before a judicial authority;

(iv) The remedy by way of habeas corpus for determination of the validity of a detention;

(v) That Parliament may not authorize a court, tribunal, commission, board or other authority to compel a person to give evidence unless he is afforded protection against self-incrimination and, where necessary to ensure such protection, the right to legal representation;

(vi) The right to be presumed innocent until proven guilty;

(vii) The right to a fair and public hearing by an independent and impartial tribunal;

(viii) The right to reasonable bail unless there is reasonable cause not to grant bail;

(ix) The right of a person to the assistance of an interpreter in any proceedings in which he is involved before a court, tribunal, commission or board.

192. Under the Judge's Rules, as soon as a charge is laid against an accused person, he must be given a copy of the entry in the charge sheet. Particulars of the charge should be stated in simple language so that the accused person may understand it. He is allowed to telephone his attorney-at-law, friend or family. An interpreter is provided at the State's expense if a person so requires. Notice of these rights is posted at conspicuous places in all police stations. If a person is denied an opportunity to communicate with his legal adviser, he has an opportunity for redress before the constitutional courts. Further, if any of the aforementioned constitutional rights of an accused person are infringed, he may apply under section 14 of the Constitution to the High Court for relief, including monetary compensation.

193. If an accused person does not have the means to pay for legal assistance, there is a system of legal aid to ensure that legal representation is available. This is regulated by the Legal Aid and Advice Act, chapter 7:07, as amended by the Bail Act 1994 and the Legal Aid (Amendment) Act 1999. The 1976 Act established a Legal Aid and Advisory Authority consisting of eight members appointed by the President. The Director of the Authority is required under the Act to maintain panels of attorneys-at-law willing to act for persons receiving legal aid.

194. The Legal Aid and Advice (Amendment) Act enacted in July 1999, has introduced a substantial number of reforms in the legal aid scheme. Legal aid is now available in respect of the following matters:

(i) Criminal proceedings in respect of:
  (a) Indictable offences whether or not determined summarily;
  (b) All offences, except motor vehicle offences charged in a court of summary jurisdiction; and
  (c) Contempt proceedings in the Magistrate's Court;

(ii) Proceedings for and in relation to an application under the Status of Children Act, 1981, the Family Law (Guardianship of Minors Domicile and Maintenance) Act 1981, the Domestic Violence Act, 1991 and the Attachment of Earnings (Maintenance) Act,1988;

(iii) Proceedings under the Summary Ejectment Ordinance, chapter 27, No.17 (1950) and the Rent Restriction (Dwelling Houses) Act, 1981, chapter 59:55;

(iv) An application for bail by a person who is charged with an offence before a court of summary jurisdiction and who is brought before the court in pursuance of a remand in custody;

(v) Proceedings in the Supreme Court of Justice;

(vi) Proceedings before any person to whom a case is referred in whole or part by the High Court;

(vii) Proceedings falling within the jurisdiction of the Petty Civil Court in which the liquidated damages claimed are not less than $240, but the applicant shall be required to make a contribution unless he can show that payment of such contribution shall cause him hardship;

(viii) Applications for the grant of probate and letters of administration where the value of the estate is more than $4,800 but does not exceed $100,000; the applicant shall be required to pay to the Director a fee, not exceeding the value of the estate.

Proceedings for which legal aid is not available under the Act are as follows:

(i) Proceedings wholly or partly in respect of:
(a) Defamation;
(b) Breach of promise of marriage;
(c) The loss of services of a woman in consequence of her rape or seduction;
(d) The inducement of one spouse to leave or remain apart from the other.

(ii) Relator actions;

(iii) Election petitions;

(iv) In the Supreme Court, proceedings for or consequent on the issue of a judgment summons, and in the case of a defendant, proceedings where the only question to be brought to the Court is as to the time or mode of payment by him of a debt (including liquidated damages) and costs;

(v) Proceedings incidental to any proceedings mentioned above.

Other amendments recently effected to the Legal Aid Act by the (1999) Amendment Act include the following:

(i) The substitution of the words "child" and "young person" with the word "minor", throughout the Act. A minor is defined as a person below 18 years of age. All minors will be treated as children.

(ii) More people will now be eligible to receive legal aid since the qualifying income limit under the 1976 Act has been raised. Previously a person whose disposable capital exceeded TT$ 1,000 or whose disposable income exceeded TT$ 2,500 per annum did not qualify for legal aid, although the Director retained a discretion to grant legal aid to persons with a disposable capital or income not exceeding TT$ 4,500. Under the new Act the disposable capital limit has been increased to TT$ 2,000 and the disposable income to TT$ 3,500. Further, the Director now has the discretion to grant legal aid to persons with a disposable capital of up to $5,000 and disposable income of up to $7,000 per year.

(iii) The Amendment Act provides for the grant of an emergency certificate of legal aid where a person desires legal aid as a matter of urgency in respect of proceedings for and in relation to an application made under the Domestic Violence Act;

(iv) The fees payable to attorneys- at- law have been increased under the Amendment Act. The fees and expenses of an attorney-at-law assigned to an applicant in the Supreme Court have been increased from $750 to $2,500, but a presiding judge now has a discretion after the conclusion of a trial to increase the attorney's fee to a sum not exceeding $7,500, in a matter of unusual length or difficulty. Previously this fee could be increased only up to a limit of $1,500 by a judge. In the past, complaints have been levied by attorneys-at-law against the low remuneration under the 1976 Act. This increase in the fee payment schedule is expected to attract more experienced legal practitioners to represent legal aid clients.

195. Some statistics on the operation of the Legal Aid Authority:

Type of service	1995	1996	1997
No. of persons who received legal advice	6 485	6 722	6 302
No. of applications for legal aid	339	346	276
No. of applications received from prisoners	507	1 191	811

In 1998, 321 males and 294 females applied for legal aid in the magistrate's courts.

196. The equality of an individual before the court is safeguarded by the independence of the judiciary. There are constitutional provisions designed to secure judicial independence from the executive and legislative branches of government. Unlike the position of the Lord Chancellor in England, the Chief Justice, who heads the judiciary, does not occupy any office in the executive or legislative arm of the State. The judiciary is insulated from executive influence or interference in terms of appointment and security of tenure. The Chief Justice is appointed by the President after consultation with, and not on the advice of, the Prime Minister and the leader of the opposition party. Judges shall be appointed by the President acting on the advice of the Judicial and Legal Service Commission, which advice he is bound to accept. The Commission is an independent body established by the Constitution comprising the Chief Justice as chairman, the Chairman of the Public Service Commission and three other members including a retired or sitting judge of the Commonwealth and two other persons with legal qualifications. A member of Parliament or a person who has held any public office within the three-year period preceding his proposed appointment does not qualify to be a member of the Commission. Once appointed, a judge can only be removed for inability to perform the functions of his office or for misbehaviour, but only after an elaborate inquiry procedure which requires a decision by the Judicial Committee of the Privy Council. The salary and allowances of a judge and other terms of service may not be altered to his disadvantage after his appointment. The Chief Justice and judges hold office until the age of 65.

197. In practice, the judiciary fiercely safeguards its independence and the courts give full effect and recognition to the constitutional rights of an accused person, both in civil and criminal

proceedings. The decisions of the courts also reflect their independence. Very frequently in civil suits, the actions of the Government of the day come under judicial scrutiny and the courts, in rendering their decisions, scrupulously adhere to the principle of fairness and uphold the rights of citizens when there are violations of the law.

198. There has been significant infrastructural development work in respect of courts in this jurisdiction. Four new magistrate's courts were recently constructed in Tunapuna. Since January 1997, 16 magistrate's courts have been or are targeted for refurbishment, including the courts in Chaguanas, Couva, Rio Claro, Point Fortin, Mayaro, Siparia and Roxborough. There is also a newly refurbished magistrate's court at Chaguaramas. With respect to the High Court, in the Hall of Justice, Port-of-Spain there are 5 criminal courts and in San Fernando there are 4 criminal courts.

199. In an effort to eliminate trial delays, consideration is being given to the introduction of new rules of the Supreme Court. New rules have been drafted and are currently being reviewed by a Rules Committee. The objective of the new rules is to enable the court to deal with cases justly. Dealing justly with a case includes: ensuring, so far as practicable, that the parties are on an equal footing; saving expense; and ensuring that the case is dealt with expeditiously.

200. With respect to juvenile persons, section 83 of the Children's Act, chapter 46:01, provides a wide spectrum of penalties for juvenile persons before the courts on criminal charges. Juveniles are children and young persons. A child is defined as a person below the age of 14 years. Young persons are persons between the ages of 14 and 16 years. There is no criminal responsibility for persons below the age of 7 years based on the doli incapax rule. In dealing with juveniles, a court is empowered inter alia to :

(i) Dismiss the charge;

(ii) Discharge the offender on his entering into a recognizance;

(iii) Place the child under probation;

(iv) Commit the child to the care of a relative;

(v) Send the child to an industrial school or an orphanage;

(vi) Order the child to be whipped;

(vii) Order the child to pay a fine;

(viii) Order the parent or guardian of the child to pay a fine, damages or costs;

(ix) Commit the offender to a place of detention; or

(x) Where the offender is a young person between 14 and 16 years, sentence the offender to imprisonment.

Under the Act, children are to be specially dealt with and the younger they are the more likely that no conviction will be recorded against them. Even if convicted, a child under 10 years of age may be sent to an orphanage or committed to the care of a relative. A child of more than 10 but less than 16 may be sent to an industrial school. Under section 78 of the Children Act, a child shall not be sentenced to imprisonment for any offence, or be committed to prison in default of payment of a fine, damages or costs.

201. A probation division of the Ministry of Social Development makes available to the courts the services of probation officers. The mission of the probation department is to promote the rehabilitation of probationers, offenders, victims and dysfunctional families by empowerment through counselling and education. The main thrust of probation work is the supervision of offenders released on probation in lieu of a custodial sentence, ensuring the reduction of re-offending and recidivism. Probation officers are expected to make visits to homes, schools and places of employment as part of their supervision plan.

202. The Children's Act deemed the St. Michael's School for Boys (for boys over 10 years old), the St. Jude's School for Girls (for girls over 10 and up to 18 years old), the St. Mary's Children Home and the St. Dominic's Children Home certified schools and orphanages. Approximately 648 children are accommodated at these four institutions. There are problems of overcrowding and understaffing at these homes. The Ministry of Social Development, recognizing that children need to be prepared for life after receiving institutional care, has worked with the management of these homes in an effort to develop programmes for the youths. One project targeted for youths is the Marion Acres farm project. Ten young males were selected to participate in this project, which included training in auto and small appliances repairs. By itself however, this project cannot accommodate all the children in need of care. Statistics indicate that an average of 65 children per year are expected to leave care. The Ministry believes that the establishment of halfway houses will immediately address the accommodation, social and training needs of the past residents of the children's homes. The immediate objective of such proposed accommodation is to enable young persons leaving care to develop social and educational skills so that they can become self-reliant. It is intended to provide accommodation in these halfway houses for a maximum of 30 males and females who are past residents of children's homes for a minimum of one year and a maximum of three years, and to facilitate the training and employment of these residents. In 1997, the Ministry of Social Development coordinated the design and implementation of social development projects including the refurbishment and construction of buildings at the St. Michael's School for Boys, the Remand Hon.. Facility at Aripo, the Couva Probational Hostel and the Centeno Halfway House Facility. These facilities are well under construction.

203. As a major step towards penal reform, the Community Service Orders Act, 1997, was implemented in June 1998 to provide for community service by persons 16 years and over. On a person being found guilty of an offence punishable with imprisonment for a period of 12 months or less, the court is now empowered to order that the person be given a suspended sentence with a community service order requiring him to perform unpaid work not exceeding 240 hours. This legislation is intended to spare young offenders from coming into contact with hardened criminals whilst at the same time allowing them the opportunity to provide a service to the community in repaying their debt to society.

204. As to the publicity of hearings, it is a fundamental principle of common law that justice shall be administered in open court and not in camera. This principle is adhered to in this jurisdiction. However, apart from a few statutory exceptions to this rule, the court has an inherent power to depart from this general rule where it reasonably believes it is necessary to serve the ends of justice.

205. The Sexual Offences Act No.27 of 1986, section 29 provides that the offences under sections 4 (rape), and 5 (sexual assault), and any offence involving children shall be heard in camera unless the court otherwise directs.

206. Under the Children Act, section 87 (4) in a juvenile court, no persons other than the magistrate and officers of the court and the parties to the case, their solicitors and counsel, and other persons directly concerned in the case, shall, except by leave of the magistrate, be allowed to attend; but bona fide representatives of a newspaper shall not be excluded except by special order of the court. Under section 97, the court may, where a person is a child or a young person (below 16) is called as a witness in any proceedings in relation to an offence against decency or morality, direct that all or any persons not being officers of the court or parties to the case, their attorneys-at law, or persons otherwise directly concerned in the case, be excluded from the court during the taking of the evidence of the child or young person. Nothing in that section, however, shall authorize the exclusion of bona fide representatives of a newspaper. Under section 98 of this Act, no child (below 14) shall be permitted to be present in court during the trial of any person charged with an offence, or during any proceedings preliminary thereto, and if so present he shall be ordered to be removed, unless he is the person charged with the alleged offence, or during such time as his presence is required as a witness or otherwise for the purpose of justice. In applications for legal custody in courts of summary jurisdiction, the child or children concerned are required to be present before the magistrate at the first hearing.

207. With respect to the presence of the accused at trials, the general rule is that an accused person must be present throughout a criminal trial. In trials on indictment the accused person must be present to plead to the indictment and his presence in court during the trial will enable him to hear what the prosecution and his witnesses have to say against him, so as to be in a position to answer their allegations. Should he, at any stage of the trial, fail or be unable to appear in court the judge will normally have to adjourn the case and, depending on the circumstances, issue a warrant for his arrest. There are two main situations in which a judge has the discretion to allow a trial to proceed in the absence of an accused person. The first is where the accused shouts, misbehaves or otherwise makes such a nuisance in court that it is impracticable to continue with him being present. The second situation is when an accused person is voluntarily absent. The judge's discretion must in these instances be exercised properly and reasonably. If the absence of an accused person from court is involuntary, such as when he is ill, the judge will almost certainly adjourn the matter. Summary trials on the other hand may and often do take place in the absence of the accused person since magistrates have a discretion so to proceed. If the proceedings began with the laying of information and the issue of a summons requiring the accused person to appear at court, the magistrate may not begin the case unless it is proved that the summons was served on him a reasonable time before the hearing date. However, if a person is remanded in custody the onus remains on the State to ensure that person is brought to court. If a remanded person does not appear in court, the matter will be adjourned until the remanded person is brought to court.

Article 15

208. In this jurisdiction it is an established rule of construction that a retrospective operation is not to be given to a statute so as to impair an existing right or obligation, otherwise than as regards matter of procedure. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only. The general rule which applies is expressed in the maxim "nova constitutio futuris forman imponere debet non praeteritis", which means that any new law that is made affects future transactions, not past ones. A court would be slow to construe an act as retrospective thereby disturbing substantive rights, unless Parliament expressly or by necessary implication has so decreed.

209. Although Parliament is not expressly prohibited under the Constitution from enacting retrospective criminal laws, there are no reported instances where such legislation has been enacted.

210. The Interpretation Act, chapter 3:01, section 27 provides that where a written law repeals or revokes another written law, unless expressed to the contrary, the repeal or revocation does not affect the prior operation of the written law so repealed or anything done or suffered thereunder.

Article 16

211. All individuals are protected under the Constitution, whether adult or child, citizen, resident or alien. Legal capacity commences at birth but this jurisdiction is one of the few remaining countries in which there is concern for the rights of the unborn foetus. Section 56 of the Offences Against the Person Act, chapter 11:08, makes it illegal for a woman to attempt an abortion. This is an offence punishable by imprisonment of up to four years. Any person who unlawfully supplies or procures for any person any poison or noxious thing, or any instrument, knowing that the same is intended to be used to procure a miscarriage, is liable to imprisonment for two years. Section 58 of the Act stipulates that any woman who is delivered of a child and who by any secret disposition of the dead body, whether the child died before or after its birth, endeavours to conceal the birth, is liable to imprisonment for two years.

Article 17

212. The Bill of Rights section of the Constitution recognizes the right of the individual to respect for his private and family life.

213. However there are statutory exceptions to the right of privacy. Under the Summary Offences Act, chapter 11:02, section 37, if information is given on oath to a magistrate or justice that there is reasonable cause for suspecting that anything stolen or unlawfully obtained is concealed or lodged in any house or yard, such magistrate or justice may, by warrant under his hand directed to any constable, cause such house or other place to be entered and searched at any time of the day or by night. The police can only enter a person's premises on the authority of a warrant lawfully issued by a magistrate or a justice of the peace. The magistrate or justice may by such warrant, if it appears necessary, give authority to the constable to use force for effecting such entry, whether by breaking doors or otherwise. Further, section 38 (1) of this Act allows a

constable to board any vessel in any harbour, bay or river and remain on board such vessel; if he has reasonable ground to suspect there is on board anything stolen or unlawfully obtained, he may search any part of the vessel.

214. A search warrant may also be issued by a magistrate under the Indictable Offences Act, chapter 12:01, section 5, if he is satisfied upon proof on oath that there is reasonable ground for believing that there is in any building, ship, vessel or place anything in respect of which any indictable offence has been committed or which will afford evidence as to the commission of any such offence or is intended to be used for the purpose of committing any indictable offence.

215. Under the Sexual Offences Act, No. 27 of 1986, section 19 (2), a magistrate or justice who is satisfied upon oath that there is reasonable ground for believing that a person is unlawfully detained in any place for immoral purposes, may issue a warrant authorizing any constable to enter (if need be by force) and search any place specified in the warrant and remove any person so detained and apprehend any person accused of the unlawful detention. Under section 23 of that Act, if it appears to any magistrate or justice, by complaint on oath, that there is reason to suspect that any premises are used for the purposes of prostitution, and that any person residing in or frequenting the premises is living wholly or in part on the earnings of prostitution, the magistrate or justice may issue a warrant authorizing any constable to enter (if need be by force) and search the premises and to arrest that person.

216. Under the Firearms Act, chapter 16:01, section 30, a justice of the peace on being satisfied on information that there is reasonable ground for suspecting that an offence under the Act has been, is being or is about to be committed, may grant a search warrant authorizing any police officer named therein to enter, at any time, any premises or place named in the warrant and to search the premises or place and every person found therein.

217. The Children (Amendment) Act, No. 19 of 1994 provides in section 11 (12) that where a complaint is made on oath that a child or young person has suffered or is suffering from harm such as to cause concern for the welfare of that child or young person, where the circumstances so require, a magistrate may issue a warrant authorizing any constable to remove the child or young person to safety and detain him there until he is brought before a Magistrate. Any constable so authorised may enter if need be, by force, any house or building or place specified in the warrant and may remove the child or young person.

218. The Maternity Protection Act, No.4 of 1998 provides in section 13 that the employer of every employee to whom this Act applies shall keep and maintain records in respect of that employee, as may be necessary, to show whether the provisions of this Act are being complied with in respect of that employee. Under section 14, the Minister may authorize any officer in the Ministry to require an employer to give him information with respect to remuneration paid to an employee in his service. Section 15 of the Act empowers this authorized officer, with the permission of the employer, to enter the premises of the employee in order to search the premises for any such books or records. However, where it is shown to the satisfaction of a judge that admission to premises has been refused and there is reasonable ground for entry into the premises, the judge may by warrant authorize entry to the premises.

219. With respect to the authority of police officers to enter premises without a warrant, under statute there are only limited cases. Under the Firearm Act, chapter 16:01, section 11, a police officer is empowered to enter any premises without a warrant and search for and seize any firearm and ammunition which he has reasonable cause to believe a person has unlawfully discharged within 40 yards of any public road or in any public place. Under section 29 of this Act, a police officer in uniform may stop any vehicle for the purpose of ascertaining whether any firearm or ammunition is being conveyed therein and may search without warrant such vehicle, the driver thereof and any person conveyed therein.

220. Under the Dangerous Drugs Act, No. 38/91, section 23, a police officer who has reasonable cause to believe that any dangerous drug is kept or concealed, for any purpose contrary to this Act, in any store, shop, warehouse, garden, yard, vessel, aircraft, vehicle or other place may by day or night search any such place for the dangerous drug and if necessary, by force, bring it before the magistrate and if any device or apparatus designed or generally used or specifically altered for the purpose of the illegal drug is there and then found, it shall also be brought before the magistrate. Under this section, however, the police are not permitted to enter a person's dwelling house.

221. Under the Quarantine Act, chapter 28:05, a police officer may enter any premises without a warrant in order to enforce compliance with the Act and with any order, instruction or condition lawfully made, given or imposed by any officer or other person under the authority of that Act.

222. A police officer may enter a person's premises without a warrant if that officer is in hot pursuit of an offender whom he is trying to arrest.

223. In the light of the high incidence of domestic violence in Trinidad and Tobago, new domestic violence legislation has been drafted to replace the 1991 Domestic Violence Act and to introduce comprehensive domestic violence legislation on a par with international standards. The new Domestic Violence Act was passed by Parliament in August 1999. Under section 22 of the Act, where a magistrate is satisfied, by information on oath, that:

(a) There are reasonable grounds to suspect that a person on premises has suffered or is in imminent danger of physical injury at the hands of another person in a situation amounting to domestic violence and needs assistance to deal with or prevent the injury; and

(b) A police officer has been refused permission to enter the premises for the purpose of giving assistance to the first mentioned person in paragraph (a),

the magistrate may issue a warrant in writing authorizing a police officer to enter the premises specified in the warrant at any time within 24 hours after the issue of the warrant and subject to any conditions specified in the warrant, to take such action as is necessary to prevent the commission or repetition of the offence or a breach of the peace or to protect life or property.

224. Section 23 (2) of the Act provides that where a police officer has been refused entry onto premises and has reasonable cause to believe that a person is engaging in or threatening to engage in conduct which amounts to domestic violence, and failure to act immediately may result in physical injury or death, the police officer may enter those premises without a warrant for the purpose of:

(a) Arresting the person whom he suspects of engaging in conduct amounting to domestic violence;

(b) Giving assistance to a person who has suffered injury;

(c) Ensuring the welfare and safety of a child who may be on the premises; and

(d) Preventing any further breach of the law.

225. However, section 23 (4) of the new Domestic Violence Act attempts to provide a safeguard against abuse of this power by making it compulsory for a police officer, when he exercises power of entry under subsection (2), to submit a written report of this to the Commissioner of Police, through the head of the division where the incident occurred.

226. A person who complains of a breach of the right to privacy under the Constitution may bring constitutional proceedings in the High Court. Outside of court, a person may lodge a complaint with the Police Complaints Authority. The Complaints Division will investigate the complaint and if necessary take disciplinary or legal action against the officer concerned. A person may also lodge a complaint with the Ombudsman, who is required to inform the complainant of the outcome of any investigation and/or recommendations made.

227. Under the Water and Sewerage Act, chapter 54:40, an undertaker, defined as a water purveyor or a licensee under the Act, may under section 24, enter any premises at all reasonable hours for the purpose of inspecting and examining meters and of ascertaining therefrom the quantity of water consumed, or in order to ascertain whether there has been some contravention of the Act, or to execute any works; except that admission to the premises shall not be demanded as of right unless 24 hours notice of the intended entry has been given to the occupier and that person, if so required, has produced some authenticated document showing his authority. If permission to enter premises is refused by a person, or if the occupier is temporarily absent, a justice of the peace may issue a warrant to enter the premises, upon satisfaction that the required notice has been given to the occupier or that the occupier is temporarily absent or that the case is one of urgency.

228. Similarly, under the Trinidad and Tobago Electricity Commission Act, chapter 54:70, section 37, the Commission, whose members are appointed by the President, is authorized to enter, or authorise any person to enter, upon any land at all reasonable times and to remain thereon as long as may be necessary for the purpose of any survey or preliminary investigation or for the carrying into effect of the objects of the Act and, for the protection of any works executed thereon, to cut down any trees or brushwood growing upon such land, as may be necessary. Section 63 of the Act provides that an officer appointed by the Commission may, at all reasonable times, enter any premises to which electricity is or has been supplied by the

Commission, in order to inspect the electric lines, metres, fittings, work or apparatus for the supply of electricity, belonging to the Commission and for the purpose of ascertaining the amount of electricity consumed or supplied. However, the Commission shall repair all damage caused by any such entry.

229. The Trinidad and Tobago Telephone Act, chapter 47:30, provides that employees or agents authorized in writing by the Company, may on production of their authority, enter the premises of any subscriber to the Company for the purpose of installing, repairing, replacing any part of the equipment, instruments and lines or upon termination and cancellation of the service, to recover equipment, instruments and lines.

230. As regards the interception of mail, a new Postal Corporation Act, 1999 is now in effect. Section 47 of the Act provides that any person who, without reasonable cause or excuse, opens or causes to be opened any postal article which is not addressed to that person, commits an offence and is liable on summary conviction to a fine of $5,000 or imprisonment for six months. Section 46 makes it obligatory for a person who comes into possession of an article not addressed to him to return it to the Trinidad and Tobago Post for delivery. A person who fails to comply is guilty of an offence and is liable to a fine of $5,000. Section 48 provides that an employee or agent of the postal company who divulges to any person, any information from or as to the contents of a postal article that comes to his knowledge in the course of duty, commits an offence and is liable on summary conviction to a fine of $10,000 or to imprisonment for 12 months. Further, under the Act, a person who is in charge of any vehicle or vessel including an aircraft, who opens a sealed mail bag with which he is entrusted for carriage is liable on summary conviction to a fine of $10,000 or imprisonment for two years.

231. With respect to unlawful attacks against honour and reputation, it is up to the individual to bring an action in defamation. This is governed by the Libel and Defamation Act, chapter 11:16. Under section 2 of the act, no action for defamation shall be maintainable in respect of words spoken, except in those cases in which such an action would be maintainable in respect of the same words in England. Under section 8 of the Act, if any person maliciously publishes any defamatory libel, knowing the same to be false, he is liable to imprisonment for two years and to such fine as the court directs. Section 17 of the Act provides that no action shall be commenced against any proprietor, publisher, editor, or any person responsible for the publication of a newspaper for any libel published therein without the sanction of the Director of Public Prosecutions.

232. The Government of Trinidad and Tobago is currently undertaking a reform of the laws which govern defamation, which have been in existence since 1846 and have remained substantially unrevised since that date. The Attorney-General has accordingly caused a defamation bill to be drafted by the Law Commission. The general intention of the proposed legislation is to repeal the existing Act and to replace it with an act which addresses the contemporary realities of society as they relate to defamation. The main recommendations of the proposed legislation include the repeal of the Libel and Defamation Act. This bill is currently in draft form and is expected to be published and laid in Parliament for debate in the near future. The proposed legislation seeks inter alia to abolish the distinction between libel and slander so that there would be no need for proof of special damage in an action for defamation which is published in the form of the spoken word. Further, individuals who are aggrieved by

publications which are defamatory should be able to get expeditious redress to protect their reputations. The Government believes that a fast track or summary procedure should be in place to address untruths which may not amount to libel or slander, in which cases the court can order the correction of such untruth in the form of a retraction, an apology or a reply. In addition, the Government's policy is that reform of the law should enable estates of a deceased person to bring an action in damages for the defamation of a deceased person and, further, the law should permit the survival of claims when a plaintiff dies. The Government is also considering the introduction of new defences in the law, such as truth and innocent dissemination. Additionally, the widening of the scope of the remedies available in an action for defamation is under consideration.

233. With regard to the interception of communications by the State, by virtue of the reception of law, the pre-1985 United Kingdom position which obtained prior to the implementation of the Interception of Communications Act, 1985, applies in this jurisdiction. The power has its origin in the exercise of the prerogative power by the Crown and is not expressly conferred by statute. The power is a power to intercept, examine and disclose for certain purposes connected with the safety of the State or the preservation of public order, any messages carried by the Crown. This prerogative attached to the new methods of carrying messages by the Crown introduced in the nineteenth century, the telegraph and the telephone. In Trinidad and Tobago this power is exercised by the Minister responsible for national security, who may issue a warrant authorizing the interception of communications. In each case, the Minister must satisfy himself that, on the facts, it is a proper case for the issue of a warrant. In practice, communications are intercepted only for the purpose of detecting serious crime or for safeguarding the security of the State. No offence is committed by a person who acts in obedience to a warrant of the Minister. The Minister's discretion is absolute and he may issue a warrant for the interception of communications to any person, authority, agency or Department of State. Although none of the reforms of the 1985 United Kingdom Act have been introduced in this jurisdiction, the Ministry of the Attorney-General is currently reviewing the law with regard to the interception of communications with a view to putting it into statutory form.

Article 18

234. The Constitution recognizes the right of an individual to freedom of conscience and religious belief and observance. Trinidad and Tobago has a diverse racial and ethnic population and religious freedom is evidenced by the number of religions that are practised here. Approximately 29.4 per cent of the population are Roman Catholics, 23.8 per cent are Hindus, 10.9 per cent Anglican, 5.8 per cent Muslims and 3.4 per cent Presbyterians. Other religions make up the remaining 26.7 per cent.

235. Parliament has recognized and given due expression to the ethnic and cultural diversity of Trinidad and Tobago society in the passage of certain legislation, such as the Public Holidays and Festivals Act, chapter 19:05, the Muslim Marriage and Divorce Act, chapter 45:02 and the Hindu Marriage Act, chapter 45:03. Many diverse churches and religious bodies have also been incorporated by Acts of Parliament. In addition, national holidays are declared to mark the observance of certain religious festivals, including, Eid-ul-Fitr for Muslims, Divali for Hindus, Baptist Liberation Day for Baptists and several Christian holidays including Christmas and Corpus Christi.

236. The Education Act chapter 49:01 prescribes that no child shall, as a condition of admission into a public school, be required to attend religious observance or any religious instruction or attend any school on any day specially set apart for religious observance. Section 7 of the Act provides that no person shall be refused admission to any public school on account of the religious persuasion, race, social status or language of such person or his parent. The right of students to pursue their own religious beliefs was illustrated in a recent application for judicial review in the High Court. In this case a High Court judge granted an order quashing the decision of the board of a public government-assisted, catholic secondary school which had refused permission to a student who adhered to the Islamic faith, to wear a modified version of a standard school uniform. The student had sought permission to wear a "hijab" or head-dress to cover her head in accordance with her religious beliefs and to lower her skirt to ankle length and extend her sleeves to the wrist. The Court held that the school board's decision was unreasonable and upheld the child's rights (Application of Summayah Mohammed v. Lucia Moraine (1995) 49 WIR 371).

237. Under the Representation of the People Act, chapter 2:01, upon registration for the purposes of elections, a person's photograph is taken for an identification card. However section 24 of the Act provides that where a person objects to the taking of the photograph on religious grounds which the registration officer considers to be reasonable, the officer shall exempt him from compliance with the rule.

238. The present Government, recognizing there are provisions in the existing laws which tend to restrict the religious freedom of certain minority groups or which are discriminatory of these groups, is engaged in a revision of these laws. At present there is in a draft unapproved form a Miscellaneous Laws (Spiritual Reform) Bill (1999), which proposes to amend the Summary Courts Act (chap. 4:20), the Summary Offences Act (chap. 11:02) and the Offences Against the Person Act (chap. 11:08). The proposed legislation inter alia seeks to remove certain offences which penalize common religious practices, such as, the practice of obeah, the carrying of lighted torches, the beating of drums, the blowing of horns and other musical instruments and assembling for the purpose of playing or dancing to such musical instruments. The proposed legislation will also seek to widen the references to certain places of worship and religious officials which are recognized by the Christian religion but which exclude other religions.

239. The Shop (Hours of Opening and Employment) (Amendment) Bill, 1999 is another proposed legislative amendment. This bill proposes to address the problem caused by the refusal of some employers to make working arrangements to facilitate employees who wish to obtain time off from their jobs for religious worship. This bill is also in a draft, unapproved form.

Article 19

240. The Constitution recognizes and protects the right of an individual to freedom of thought and expression and the Government respects this right in practice. An independent press and a functioning democratic political system combine to ensure freedom of speech and of the press. There are two local television stations and a televised information channel and some seven newspapers which publish daily or weekly papers. The newspapers and the local television stations freely, openly and candidly discuss and criticize the performance of the Government of

the day. There are frequent live call-in programmes on the radio and television which give a wide cross section of the public ample opportunity to air their views or grievances publicly, on subjects ranging from personal problems to matters of national or community interest.

241. The law which governs wireless licences is contained in the Wireless Telegraphy Act, chapter 36, No. 2 (Act No. 23 of 1941). Although there is a Telecommunications Act No. 40 of 1991, this Act has not been proclaimed and is not yet in effect. Under section 3 of the existing legislation, no person shall install or use any wireless apparatus unless he is in possession of a valid licence for that purpose. Wireless apparatus includes an apparatus capable of receiving wireless messages or other communications and a loudspeaker. Under section 6 of the Act it shall not be lawful for any person to sell or deal in wireless apparatus without first obtaining a licence and on payment of the prescribed fees. Any person who contravenes the Act is liable to a fine. Under the regulations to the Act, this licence may be modified or cancelled at any time by notice in writing, on any breach of the conditions of the licence. Under regulation 10 the use of loudspeakers for disseminating broadcast reception is prohibited between the hours of 11 p.m. and 6 a.m., except with special permission.

242. One statutory exception to the freedom of the press is contained in the Sexual Offences Act, No. 27 of 1986, section 32, which provides that after a person is accused of an offence under that Act, no matter likely to lead members of the public to identify a person as the complainant or as the accused in relation to that accusation shall either be published in Trinidad and Tobago in a written publication available to the public or be broadcast in Trinidad and Tobago except:

(i) Where the court directs that the effect of the restriction is to impose a substantial and unreasonable restriction on the reporting of proceedings and that it is in the public interest to remove the restriction in respect of the applicant; or

(ii) In the case of an accused person, after he has been tried and convicted of the offence.

A person who publishes or broadcasts any matter contrary to this section is guilty of an offence punishable by a fine of TT$ 25,000 and to imprisonment for five years.

243. In an effort to control pre-trial publicity in indictable offences, the law provides in the Indictable Offences (Preliminary Enquiry) Act, chapter 12:01, section 42, that no person shall publish or print or cause or procure to be printed or published, in relation to any preliminary inquiry, any particulars other than the names, addresses and occupations of witnesses; a concise statement of the charge and the defence in support of which evidence has been given; submissions on any point of law arising in the course of the inquiry, and the decision of the magistrate. Any person who acts in contravention of this section is liable to a fine of $2,000 or to imprisonment for four months.

244. Generally the laws relating to freedom of expression in this jurisdiction mainly comprise old English common law collected from thousands of old English cases and from old English statutes inherited by doctrine of reception. Although there has been reform of the law in Britain, these reforms have not been enacted into our domestic legislation. As a result the law relating to

this right is in need of reform. With this is mind, in 1997, the present Government prepared and published a green paper entitled "Reform of the media law - towards a free and responsible media". This green paper notes that freedom of expression is an essential human right which must be guaranteed by laws which are up-to-date, workable and comprehensive and which contain only such exceptions as are necessary to protect other values in a free and fair society. Since the free speech principle is grounded in the public interest, it must give way on occasions when the public interest points the other way - to secure a fair trial, to protect citizens against damaging falsehoods or unwarranted invasion of their privacy, to prevent incitement to racial violence or breaches of vital national security. But what is required whenever expression is suppressed is some overwhelming justification, advanced and adjudicated according to law. The observations of the green paper may be summarized as follows:

(i) The principle of licensing journalists or editors is rejected since the right to freedom of expression is guaranteed to all individuals and cannot in principle be withdrawn by any system of licensing or professional registration.

(ii) The laws which relate to freedom of expression are old, vague and frequently anachronistic. They mainly comprise the English common law. Even some common law which has a continuing value, such as the law of obscene libel and the law of contempt of court, is applicable in Trinidad and Tobago in its ancient unsatisfactory state, without the reforms subsequently made in England by, for example, the 1959 Obscene Publication Act and the 1981 Contempt of Court Act. In most cases, replacing the common law with up-to-date statutes would amount to liberalizing the law in favour of freedom of expression. Such media law statutes that do exist are mainly taken direct from British equivalents that have been reformed in Britain but not in Trinidad and Tobago. One example is the Libel and Defamation Act, which dates from 1846 and embodies British law as it existed at that time. It contains the offence of criminal libel, which many believe should be abolished, and includes none of the reforms introduced in Britain by the 1952 Defamation Act. Thus the media in Trinidad and Tobago are denied the statutory extension of the defence of qualified privilege and the important procedural extension of the defences of justification and fair comment. Another example is the Children and Young Persons (Harmful Publications) Act of 1955, which is directed only against "horror comics" and does nothing to protect children from the more recent evil of violent and sexually explicit videos.

(iii) Media law makes no provision for protection of journalistic sources. The law in this respect is the English common law of contempt, under which a journalist is liable to imprisonment if he or she does not identify a source when required in court.

In light of the above, this green paper suggests that the parliamentary draftsman produce a single statute - The Press and Broadcasting Act - repealing all ancient statutes received or applied in colonial times. The Act should provide special protection for journalists against punishment for contempt for refusing to disclose their sources of information, unless the identity of the source is essential to prevent crime or major disorder or to defend national security.

Other recommendations of this government green paper are as follows:

(i) The crime of contempt of Parliament should be abolished;

(ii) Parliamentary privilege should remain, but persons defamed by Members of Parliament should be permitted a right of reply of reasonable length to be tabled by the Speaker;

(iii) When the media makes damaging statements about individuals that can subsequently be proved to be false, victims should be entitled to demand a speedy correction or apology for false statements, and a right to have a reply of reasonable length published to answer an attack. Where a plaintiff can prove actual malice, i.e. a deliberate campaign to publish allegations known to be false, he or she should be entitled to damages for a wrong intentionally committed. And where a newspaper or television station is persuaded of the truth of its allegation, it must be entitled to have the matter fully and openly tried, rather than submit to any court-ordered correction. In these two classes of case there will be no alternative but a defamation trial;

(iv) Less controversial changes that will benefit the media can include changing the burden of proof from the defendant to the plaintiff, who would need to disprove the allegation on the balance of probabilities before recovering damages;

(v) The criminal law of libel threatens journalists with prison, rather than their proprietors with damages, for defamatory statements about important people. This is a draconian step to take, and where a proper civil libel law is in place it may be doubted whether imprisonment can ever be justified for the mere publication of statements and opinions, however wrong, when there is no aggravating feature. Consideration should be given to abolishing criminal libel;

(vi) Consideration should be given to abolishing the ancient offence of blasphemous libel and replacing it by a crime of inciting religious hatred. The elements of crime would require proof of intention and of a likelihood of a breach of the peace;

(vii) In jury trials it is necessary to limit prejudicial reporting until the verdict has been reached. The Act should have a section on contempt and restriction on court reporting. This should apply to trial by jury and not to proceedings heard by judges;

(viii) The common law test for contempt is vague and should be narrowly defined to catch only those publications which create substantial risk of serious prejudice to jury trials. The new Act should provide clear statutory guidance on when contempt may be committed and provide a public interest defence;

(ix) Consideration should be given to permitting the televising and radio broadcasting of some court proceedings. There will have to be rules and exceptions - no identification of jurors, or protected witnesses, et cetera;

(x) The law of trespass is inadequate to protect citizens against invasion of their home and family life, or media intrusion into hospitals or funerals or private grief after tragic accidents. The right to privacy is guaranteed and it is recommended that there should be made available a new civil tort for unwarranted invasion of privacy. Plaintiffs would have to prove that the defendant deliberately invaded their privacy, that the invasion was not justified on the ground of public interest and that they have suffered damage as a result. As an alternative to this legal remedy, there can be self-regulatory procedures, e.g. a code of ethics for media representatives, a press complaints commission;

(xi) The crime of obscene libel should be abolished and replaced by a modern offence that strikes against depiction of sexual violence and for which there should be a defence for works of literary, artistic, scientific or sociological merit;

(xii) There should be a censorship board tasked with classifying films and videos for purposes of importation and distribution and which has power to classify a work for sale or screening only to adults and it should be a criminal offence for anyone to disobey its classifications. Further such a board should be empowered to receive complaints about unacceptable levels of sexual explicitness or violence on television, and to issue public adjudication and hearings in respect of any complaints it finds to be justified;

(xiii) Consideration should be given to allowing a person claiming to be a victim of unjust or unfair treatment in a broadcast programme to lodge a complaint with a complaints commission empowered to adjudicate and to order the broadcaster to transmit its adjudication. An alternative is to establish a statutory office of media Ombudsman, independent of the Government, to receive and publish rulings on complaints of bias and unfair treatment.

245. When this green paper was published in 1997, it evoked intense public criticism, particularly from media practitioners and publishing houses and its far-reaching proposals attracted both praise and criticism. Since then the Law Commission was mandated to manage the public comment and to assess overall public response to each of the green paper's proposals. On the basis of public comments, the Attorney-General concluded there was urgent need to reform the law relating to libel and defamation, to abolish the offence of blasphemous libel to implement provisions which would afford protection to all religious denominations and to create a statutory "right to know". Legislation has since been drafted in these areas in the form of a Defamation bill (still in draft form), a Freedom of Information bill and a Miscellaneous Laws (Spiritual Reform) bill (still in draft form). With respect to the other recommendations in the green paper, the Government is of the view that more in-depth research, greater public dialogue and further analysis is necessary before these recommendations are translated into legislative policy. To facilitate this the Attorney-General has appointed a committee to examine these recommendations and to engage in further consultation with media organizations and other

interested persons. The Committee's mandate is to submit a report outlining the policy, which should inform the drafting of legislation in these areas. At present the report of the Committee has not yet been completed.

246. The right to receive information is being given legal recognition in the Freedom of Information Bill (No. 2) 1998 which was passed in the House of Representatives in July this year. This bill seeks to extend the right of members of the public to have access to information in the possession of public authorities. Clause 7 of the bill provides that after the commencement of the Act, a public authority shall cause to be published a statement setting out inter alia the categories of documents maintained in its possession and the procedure to be followed by a person making a request for access to a document. Clause 8 would require a public authority to cause copies of certain documents to be made available for inspection and purchase by members of the public. Part IV of the bill specifies those documents which are exempt documents, include inter alia:

(i) Under clause 24:

The official record of any deliberation or decision of the Cabinet;

A document that has been prepared by a minister of government or on his behalf, or by a public authority for the purpose of submission for consideration by the Cabinet, or a document which has been considered by Cabinet and which is related to issues that are or have been before the Cabinet;

(ii) Under clause 25, a document is exempt if it contains information, the disclosure of which would be likely to prejudice the defence of the Republic of Trinidad and Tobago or the security or intelligence services;

(iii) Under clause 26, a document is exempt inter alia if disclosure would be contrary to public interest and disclosure would:

Prejudice relations between this Government and the Government of any other State or an international organization of States;

Divulge any information or matter communicated in confidence by or on behalf of the Government of another State to the Government of Trinidad and Tobago;

(iv) Under clause 28 of the bill, a document is also exempt if its disclosure would:

Prejudice the investigation of a breach or possible breach of the law;

Prejudice the enforcement or proper administration of the law in a particular instance;

Prejudice the fair trial of a person or the impartial adjudication of a particular case;

Disclose, or enable a person to ascertain the identity of a confidential source of information in relation to the enforcement or administration of the law;

Disclose methods or procedures for preventing, detecting, investigating or dealing with matters arising out of, breaches, or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or

Endanger the lives or physical safety of persons engaged in law enforcement;

(v) Under clause 29, a document is exempt if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege;

(vi) Under clause 30, a document is exempt if its disclosure would involve the unreasonable disclosure of personal information of any individual;

(vii) Clause 31 provides that a document is exempt if its disclosure would disclose information acquired by a public authority from a business, commercial or financial undertaking and the information relates to trade secrets or other matters of a business, commercial or financial nature; or the disclosure of the information would be likely to expose the undertaking to a disadvantage.

247. However, clause 35 of the bill provides that a public authority shall give access to an exempt document where there is reasonable evidence that significant abuse of authority or neglect in the performance of official duty, injustice to an individual, danger to health and safety; or unauthorized use of public funds, has or is likely to have occurred and if in the circumstances giving access to that document is justified in the public interest having regard to any benefit and to any damage that may arise from doing so.

248. Clause 39 of the Act provides that a person aggrieved from any decision of a public authority under the Act may apply to the High Court for judicial review of the decision.

Article 20

249. A number of provisions have been drafted which make incitement to discrimination, hostility or violence, illegal. For example, article 3 of the Sedition Act defines a "seditious intention" as, inter alia, one which seeks to "excite any person to attempt, otherwise than by lawful means, to procure the alteration of any matter in the State by law established" or to "engender or promote feelings of ill will towards, hostility to, or contempt for, any class of

inhabitants of Trinidad and Tobago distinguished by race, colour, religion, profession, calling or employment". Such behaviour is a criminal offence and the fear of criminal prosecution is a deterrent to the incitement of racial hatred.

250. Similarly, any person who, at a public meeting or during the course of a public march, distributes or displays any writing, sign or visible representation which is threatening, abusive or insulting, whereby a breach of the peace is likely to be occasioned, is liable to a fine of TT$ 1,000 or to imprisonment for six months.

251. At present, Parliament is considering the Equal Opportunities Bill, 1998, an "Act to prohibit certain kinds of discrimination, to promote equality of opportunity between persons of different status, to establish an Equal Opportunity Commission and an Equal Opportunity Tribunal and for matters connected therewith". Clause 7 of this bill, states that a person shall not, otherwise than in private, do any act which is reasonably likely to offend, insult, humiliate or intimidate another person or group of persons; and is done because of the race, origin or religion of the other person or of some or all of the persons in the group; or which is done with the intention of inciting racial or religious hatred.

Article 21

252. Freedom of assembly is expressly recognized in section (j) of the Constitution.

253. There are no restrictions on the freedom of assembly other than a requirement that notice be given under the Summary Offences Act as amended by Act No. 17 of 1998. This provides that any person desirous of holding or calling together any public meeting or march must notify the Commissioner of Police at least 48 hours in advance. Previously only 24 hours notice was required. The notification must include the purpose(s), approximate time, place or route of the meeting or march. If the commissioner has reasonable grounds for apprehending that the holding of the public meeting or march would occasion serious public disorder he may, in the case of a meeting, impose such conditions on the organizers as appear to him necessary for the preservation of the public peace and order, or, in the case of a meeting or march, he may prohibit it in writing. In the case of a prohibition, he must state the reasons for it in writing and serve the notice personally on any of the signatories of the notification or leave it at their address. The fine for violation of the Act has increased from TT$ 2,000 and imprisonment for 12 months to TT$ 10,000 and to imprisonment for two years.

254. Although there are no other statutory restrictions on the holding of an assembly, a problem of venue may arise. If an assembly is held on private lands, this becomes a trespass. Further, under the Highways Act, chapter 48:01, section 50 (1), any person who without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway is liable to a fine of TT$ 200. A constable may arrest without warrant any person whom he sees committing an offence against this section. Under this Act a highway is defined as the whole or part of any road, thoroughfare, street, trail, or way maintainable at the public expense and dedicated to public use. Accordingly if an assembly on the highway constitutes an obstruction, this will be an offence punishable by a fine under this Act.

Article 22

255. Freedom of association is expressly guaranteed under section 4 (j) of the Constitution. The right to join political parties is guaranteed under section 4 (e) of the Constitution. The right to join trade unions is however not guaranteed in the Constitution.

256. There are several associations incorporated by Act in the Republic of Trinidad and Tobago. Friendly societies are regulated by the Friendly Societies Act, chapter 32.50.

257. The establishment and operation of trade unions are regulated by the Trade Unions Act, chapter 88:02 and the regulations made thereunder. Under the Trade Union Act, chapter 88:02, there shall be a registrar of trade unions for the purpose of this Act. Every trade union is required to be registered under this Act. Section 10 (4) of the Act provides that if any purposes of the trade union are unlawful, the trade union shall not be registered. Under section 22, a person under the age of 21 but above the age of 16, may be a member of a trade union. The Industrial Relations Act, chapter 88:01, empowers the Court inter alia to enjoin a trade union or other organization of workers or other person from taking or continuing industrial action. This Act established in section 21 a Registration, Recognition and Certification Board which is charged with responsibility for the certification of recognized majority unions. There is a trade union division of the Ministry of Labour. Some of the main trade unions are the Trinidad and Tobago Unified Teachers' Association for teachers in the public service, the Oilfields Workers Trade Union, the Public Services Association of Trinidad and Tobago, the National Union of Government and Federated Workers (the largest union), the Seamen and Waterfront Workers' Trade Union and the All Trinidad Sugar and General Workers Trade Union.

258. There are no limitations on the establishment and operations of political parties. Parties are not required to be registered but are required to register their nominated candidates with the Elections and Boundaries Commission on the date appointed prior to local or parliamentary elections, and to pay the necessary deposit for such candidates. In Trinidad and Tobago democracy, there is a multi-party system in which several political parties participate in both parliamentary and local government elections. Parliamentary elections are constitutionally due every five years and local government elections every three years. At present there are three main political parties, the United National Congress, the People's National Movement and the National Alliance for Reconstruction. At the last general elections, in 1995, in addition to the three main political parties, several newly formed parties contested the election, including the Movement for Unity and Progress, the National Transformation Movement, the People's Voice and the Natural Law Party.

Article 23

259. Marriages are permitted in Trinidad and Tobago under the Marriage Act (chap. 45:01), the Muslim Marriage and Divorce Act (chap. 45:02) and the Hindu Marriage Act (chap. 45:03).

260. The Marriage Act, chapter 45:01, provides for a Registrar General who shall be the registrar of marriages. The President may appoint district registrars of marriage under section 5 of the Act. Section 7 provides that the President may grant licences to such persons, being ministers of any Christian religion, as the President may, in his discretion, think fit, to be

marriage officers and he may cancel any such licence. Under section 12 of the Act, a marriage may be solemnized under the authority of a district registrar's certificate, under the authority of a marriage officer's certificate or under the authority of a licence from the President. Section 16 (3) provides that the marriage officer shall publish the banns of marriage between the parties. Section 23 of the Act provides for the manner in which the consent of a minor is to be obtained. If both the minor's parents are alive, consent shall be obtained from both parents. Under section 24 of the Act, in case any person, whose consent is required by law to any marriage is absent from Trinidad and Tobago, or is unable or refuses to give such consent, the persons desirous of contracting such a marriage may apply by petition to a judge of the High Court who may proceed upon the petition in a summary way. If the marriage appears to the judge to be proper, he may declare by order that such marriage may be solemnized. Section 28 of the Act provides that on delivery of a certificate of a district registrar or on delivery of a certificate of a marriage officer or on delivery of a licence from the President, to any marriage officer, the marriage officer may solemnize a marriage between the parties. However, such marriage shall be solemnized with open doors between the hours of 6 a.m. and 6 p.m. in the presence of two or more credible witnesses other than the marriage officer.

261. The Muslim Marriage and Divorce Act, chapter 45:02, No. 7 of 1961, provides that the President may divide Trinidad and Tobago into Muslim Marriage districts for the purposes of the Act. The President under section 4 may appoint a fit and proper person to be the Registrar General of Muslim marriages and divorces for Trinidad and Tobago and a fit and proper person to be registrar of Muslim marriages for each district. Under section 5 the President may in his discretion appoint any fit and proper person, being a member of the Muslim community, to be a marriage officer for the purposes of the Act and the President may, without assigning any reason for so doing, cancel any such appointment. Section 6 of the Act sets out the requisites for a valid Muslim marriage, inter alia: that each of the parties should belong to and profess the Muslim faith or religion; that each of the parties shall, as regards age, mental capacity and otherwise, be capable of contracting marriage; that the parties, understanding the nature of the contract, shall freely consent to marry one another and that the marriage shall be registered in accordance with the Act. Under section 7 (3) of the Act, nothing shall authorize or validate the contracting or registration of a polygamous marriage. Under section 8 of the Act, the age at which a person, being a member of the Muslim community, is capable of contracting marriage is 16 in the case of males and 12 in the case of females. However, in the case of an intended marriage between persons under 18 years of age, the consent to the marriage of the father shall be certified in writing by the marriage officer before whom the marriage is contracted.

262. The Hindu Marriage Act, chapter 45:03, No. 13 of 1945, provides in section 3 that the President may divide Trinidad and Tobago into Hindu marriage districts for the purposes of the Act. Under section 4 the President may appoint a Registrar of Hindu Marriages for Trinidad and Tobago and a district registrar for each district. Section 5 of the Act provides that the President may grant licences to such persons, being priests of the Hindu religion, as the President may, in his discretion, think fit, to be marriage officers and he may cancel such licence. Under section 9 of the Act, the requisites of a valid Hindu marriage include: that each party shall belong to the Hindu faith; that both parties shall, as regards age and mental capacity, be capable of contracting marriage; that the marriage be solemnized by a marriage officer in accordance with the rites of the Hindu religion; that the parties, understanding the nature of the contract, shall freely consent

to marry one another; and that the marriage shall be registered in accordance with the Act. Under section 11 of the Act, the age at which a person is capable of contracting a marriage shall be 18 years in the case of males and 14 in the case of females.

263. An Orisa (Baptist) Marriage Act was implemented in August 1999. This legislation, which is the first of its kind in any jurisdiction, gives legal effect to marriages performed according to Orisa rites and is drafted in response to the fact that the Orisa faith has been advocating such legislation for many years. This Act provides for the appointment of a registrar of Orisa marriages for Trinidad and Tobago and district registrars for each district. Under the Act the President may grant licences to priests or priestesses of the Orisa faith to be marriage officers. The Act stipulates that the age at which a person, being a member of the Orisa faith or religion, is capable of contracting marriage shall be 18 years in the case of males and 16 years in the case of females. The Orisa religion was brought to Trinidad from the Yoruba culture of West Africa during the period of slavery. It is estimated that several thousand citizens of this country practise and pursue Orisa beliefs.

264. It is also to be noted that a Cabinet-appointed committee is presently reviewing all existing and proposed marriage legislation relating to the solemnization and registration of marriages in Trinidad and Tobago.

265. In Trinidad and Tobago, it is estimated (1990 Census) that no fewer than 40,724 people live in common law unions. The Status of Children Act, chapter 46:01, No. 17 of 1981 provides in section 3 that the status and rights, privileges and obligations of a child born out of wedlock are identical in all respects to those of a child born in wedlock. By this legislation, the children of unmarried parents were granted the same legal rights in law as legitimate children. However, this Act did not recognize common law spouses or their rights. In the light of the high incidence of these common law unions and the non-recognition of the rights of common law spouses, the Government has implemented legislation to address this injustice. Under the Cohabitational Relationships Act No. 30 of 1998, a cohabitational relationship is defined as a relationship between cohabitants who, not being married to each other, are living or have lived together as husband and wife on a bona fide domestic basis. Under this 1998 Act, the High Court has jurisdiction to make any order or grant any relief under the Act, including in relation to property, an order declaring a title or right or adjusting an interest, or an order for the periodical payment to a cohabitant of such sums of money as may be specified or the payment to a cohabitant of a specified lump sum. Under section 6 of the Act a cohabitant may apply to the High Court for the granting of an adjustment order or the granting of a maintenance order. However the Court shall not make an order under section 6 unless it is satisfied that the applicant lived in a cohabitational relationship with the respondent for a period of not less than five years or the applicant has a child arising out of the cohabitational relationship. Section 10 of the Act provides that on an application for an adjustment order the High Court may make any such order as is just and equitable, having regard to the financial contributions made directly or indirectly by or on behalf of the cohabitants to the acquisition or improvement of the property and the financial resources of the partners; and any other contributions, including any contribution in the capacity of house-maker or parent, made by either of the cohabitants to the welfare of the family constituted by them. Under section 15 of the Act, a court may make a maintenance order where it is satisfied inter alia that the applicant is unable to support himself adequately by reason of having the care and control of a child of the cohabitational relationship, being a child under the age of

12 years or in the case of a disabled child, under the age of 18. A maintenance order shall cease to have effect on the marriage or remarriage of the cohabitant. In any case a maintenance order shall not exceed three years.

266. The term "family" is not given a full definition within the laws of Trinidad and Tobago. There are, however, several Acts aimed towards protection of this social group. The Family Law (Guardianship of Minors, Domicile and Maintenance) Act 1981, chapter 46:08, describes itself as an act to define and regulate the authority of parents as guardians of their minor children, whether or not born in wedlock. Under this Act, a minor is defined as a person under the age of 18. A minor child of the family is defined as including a minor child of unmarried or married persons, or any other minor child who has been treated by both of those parties as a minor of their family. Under section 3 of this Act, where in any proceedings before any court, the legal custody or upbringing of a minor or the administration of any property belonging to or held in trust for a minor, is in question, the court shall regard the welfare of the child as the first and paramount consideration, and shall not take into consideration whether, from any other point of view, the claim of the father or any right at common law possessed by the father in respect of such custody, upbringing, administration or application, is superior to that of the mother or the claim of the mother is superior to that of the father. Section 4 of that Act provides that in relation to the custody or upbringing of a minor, and in relation to the administration of any property belonging to the minor, a mother shall have the same rights and authority as the law allows to a father, and the rights and authority of a mother and a father shall be equal and exercisable by either parent without the other.

Article 24

267. There are many statutory provisions in the existing laws of Trinidad and Tobago which provide for the welfare and protection of children.

268. The Births and Deaths Registration Act, chapter 44:01, section 16 provides that in the case of every child born alive, it shall be the duty of the father and the mother of the child, to give to the Registrar within 42 days next after the birth, information of the particulars required to be registered concerning birth.

269. Section 17 (1) of the Constitution provides that every person born in Trinidad and Tobago shall become a citizen of Trinidad at the date of his birth, except that a person shall not become a citizen if at the date of his birth neither of his parents is a citizen of this jurisdiction or if either of his parents is an enemy alien under the Constitution.

270. Under the Age of Majority Act, chapter 46:06, section 2 (1), a person shall attain full age on attaining the age of 18 instead of on attaining the age of 21. The Status of Children Act, chapter 46:07 provides in section 3 that the status and the rights, privileges and obligations of a child born out of wedlock are identical in all respects to those of a child born in wedlock. Under the Children's Act, chapter 46:01, a child means a person under the age of 14 years and a young person means a person who is 14 years of age or over.

271. Restrictions on the employment of children are contained in part V of this Act. Section 90 provides that any employer who employs a person under the age of 18 years at night

in any public or private industrial undertaking, other than an undertaking in which only members of the family of the proprietor are employed, is guilty of an offence. Persons over the age of 16 may be employed during the night in the manufacture of raw sugar cane and in any undertaking which may be declared by the President to be an exception. Under section 91, children under the age of 14 shall not be employed or work in any public or private industrial undertaking, other than an undertaking in which only members of the same family are employed. This section does not apply to work done by any child under the age of 14 years who is under an order of detention in a certified industrial school or orphanage.

272. The Infants Act, chapter 46:02, provides protection for infants. Section 19 of this Act provides that all contracts entered into by infants for the repayment of money lent or for goods supplied shall be absolutely void. Section 20 provides that no action shall be brought to charge any person upon any promise made after full age to pay any debt contracted during infancy.

273. The Legitimation Act, chapter 46:04, section 3, provides that, where the parents of an illegitimate person marry or have married one another, the marriage shall, if the father of the illegitimate person is or was at the date of the marriage domiciled in Trinidad and Tobago, render that person, if living, legitimate from the date of the marriage of his parents.

274. The Children's Act, as amended by Act No. 19 of 1994, contains provisions for the protection of children who are ill-treated or neglected. Section 3 of the Act provides that if any person over the age of 16 years who has custody, charge or care of a child or young person, wilfully assaults, ill-treats, neglects, abandons or exposes the child or young person, or causes or procures the child or young person to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause the child or young person injury to his health, that person is liable on conviction to a fine of TT$ 10,000 on conviction on indictment and/or to imprisonment for two years, or on summary conviction to a fine of TT$ 5,000 in addition to imprisonment for six months.

275. Trinidad and Tobago is a signatory to the Convention on the Rights of the Child, having ratified that Convention on 5 December 1991.

Article 25

276. Chapter 1, part 1, of the Constitution recognizes as a fundamental human right and freedom the "right to join political parties and to express political views". This guarantee assures all citizens the right to take part in the conduct of public affairs, directly or through freely chosen representatives. Elections to the House of Representatives are constitutionally due every five years, while local government elections are held every three years. Citizens participate in the conduct of public affairs through freely chosen representatives. Trinidad and Tobago has held free and fair elections every five years since 1956. Citizens and qualifying residents, once registered, are eligible to vote at both parliamentary and local government elections. There is universal and adult suffrage. The election of members of the House of Representatives shall be by secret ballot and "in accordance with the first-past-the-post system".

277. Candidates in parliamentary and local government elections are elected by universal adult suffrage. Section 70 of the Constitution provides that Trinidad and Tobago shall be divided

into 36 constituencies and each constituency shall return one member to the House of Representatives. No less than two constituencies shall be in the island of Tobago. At parliamentary elections held every five years, different political parties nominate candidates for each of the 36 constituencies. The candidate who secures the majority of votes in each constituency becomes the parliamentary representative for that constituency in the House of Representatives. The political party whose candidates have won the majority of the 36 seats in the House of Representatives forms the Government. Under the Constitution the President must appoint as Prime Minister a member of the House of Representatives who is the leader of the political party which commands the support of the majority of the members of that House. Where no majority party emerges, the President appoints as Prime Minister, the person who in his view is most likely to command majority support in the House of Representatives. The Prime Minister presides over the Cabinet and is responsible for allocation of the functions among ministers.

278. Local government is governed by the Municipal Corporations Act, No. 21 of 1990. The country is divided into two cities, three boroughs and nine regional corporations for the purpose of local government. The jurisdiction of each corporation is clearly defined under the Act. Local government elections are held every three years. Municipal corporations are responsible for the functions set out in the Act, No. 21 of 1990, which include the distribution of truck-borne water, the construction and maintenance of drains and water courses, the provision of parks and recreation grounds, the maintenance of State property, including police stations, health centres, post offices and government buildings, the enhancement of the environment, the disposal of garbage, the coordination of local athletic events and cultural displays.

279. The Constitution, in section 71 provides for the establishment of an Elections and Boundaries Commission, an independent electoral authority. The members of the Commission include a chairman and not less than four other members. The Chairman and other members of the Commission have been appointed by the President, after consultation with the Prime Minister and Leader of the Opposition. A person shall not be qualified to hold office as a member of the Commission who is a minister, a parliamentary secretary, a member of the House of Representatives, a senator or a public officer. A member of the Commission shall vacate his office at the expiration of five years from the date of his appointment, but is eligible for reappointment. The Commission shall be provided with a staff adequate for the efficient discharge of its functions.

280. This Commission exercises general direction and supervision over the administrative conduct of elections and enforces, on the part of election officers, fairness and impartiality. Under the Representation of the People Act's registration rules, chapter 2:01, the Commission is required to prepare a list of electors qualified to vote in each parliamentary and municipal council election.

281. Trinidad and Tobago is divided into registration areas set out in the First Schedule to the Act. Section 19 of the Act provides that no person shall be registered in more than one unit register for the purpose of any category of election. Section 19 (2) provides that a person shall be registered in respect of the registration unit in which he has his place of residence. At present 881,766 voters are registered with the Elections and Boundaries Commission.

282. With regard to parliamentary elections, persons allowed to vote include citizens 18 years or above and Commonwealth citizens who have been resident in Trinidad and Tobago for a period of one year. Section 13 of the Act provides that a person is qualified to be an elector at a municipal council election who is 18 years or above and who is a citizen or is a Commonwealth citizen who is and for a period of one year preceding such date has been a resident of Trinidad and Tobago. However, in the case of local government elections, persons other than Commonwealth citizens are allowed to vote, provided they have resided in Trinidad and Tobago for a continuous period of five years preceding such date. Under section 15 of the Act no person is qualified to be or remain registered as an elector who is mentally ill, under sentence of death or is serving a sentence of imprisonment exceeding 12 months.

283. Section 31 of the Act provides that a person who is holding or acting in the office of Chief Elections Officer or Assistant Chief Elections Officer shall be disqualified from membership of the House of Representatives, a municipal corporation or county council. Other persons disqualified from membership of the House of Representatives and municipal councils are those listed in the Second Schedule to the Act, including members of the Trinidad and Tobago Defence Force, the Chairman of the Board of Film Censors, the Chairman of the Water and Sewerage Authority, the Chairman of the Trinidad and Tobago Electricity Commission, the Chairman of the Port-Authority, the Chairman of the Public Transport Service and members of the Rent Assessment Board.

284. Section 35 of the Act provides that the proceedings at an election shall be conducted in accordance with the Election Rules. Section 36 provides that save as otherwise provided by the Election Rules all persons voting as electors at an election shall do so in person at the polling station allotted to them. Further, every employer is required on polling day to allow every elector in his employment the prescribed period for voting and no employer shall make any deduction from the pay of such elector by reason of his absence for that period. Section 37 of the Act provides that no person shall, as an elector, give more than one vote for any one candidate or vote in more than one electoral district.

285. The Election Rules made under the Act provide inter alia for the publication of an election notice specifying inter alia the day and place fixed for nomination of candidates. Rule 7 provides that every candidate for election shall be nominated by six or more persons whose names appear on the list of electors. A person shall not be validly nominated unless, in the case of election to the House of Representatives, he deposits the sum TT$ 500 and in the case of local government elections he deposits TT$ 200 for transmission to the Comptroller of Accounts. Rule 19 provides for the establishment of such number of polling stations in each electoral district, each polling station being in premises of convenient access. Each polling station shall contain one or more voting booths so arranged that each elector may be screened from observation and, without interference or interruption, mark his ballot paper. Rule 20 provides that each ballot box shall be designed with a slot at the top for insertion of the ballot but not for the withdrawal of ballots. Rule 22 provides that as soon as possible after nomination of candidates the Commission shall cause ballot papers to be printed for use in that election. A ballot paper is a paper on which there is printed the name of each candidate arranged in alphabetical order, and the symbol assigned to each candidate. Under rule 25 every candidate shall be entitled to a free copy of the revised list of electors for each polling station in his electoral district. Rule 27 provides that the taking of the poll in each polling station shall be

between 6 a.m. and 6 p.m. of the same day. If at the hour of the closing of the poll there are any electors within the polling station who have not yet cast their votes, the poll shall be kept open for a sufficient time to enable them to vote. Rule 26 provides that every employer shall permit each elector in his employment to be absent from work on polling day during the hours of the poll for two hours. Rule 36 states that no person shall be entitled to vote unless his name appears on the revised list of electors for that polling division. Under rule 37, it is the duty of the presiding officer to keep order at his polling station. If a person misconducts himself in a polling station he may immediately be removed from the polling station by a police officer upon the order of the presiding officer at that station. Rule 38 provides that if a prospective voter does not hand an identification card to the poll clerk, he shall give his name and address to the poll clerk who, if the name of such person is recorded on the revised list of electors, shall require the person to take an oath. Rule 39 provides that the Commission may issue poll cards to prospective voters. Where the elector is unable to sign his name because of illiteracy or physical disability, he shall make an impression in ink on the original of the poll card in the place directed. Where the elector has no finger on either hand the poll card shall be signed for him. Under rule 40, the presiding officer, if no mark of electoral ink appears on the fingers of the elector, shall deliver the ballot to the elector in the manner provided and direct the elector to the voting booth. There the voter shall mark his ballot by imprinting an X against the particulars of the candidate of his choice with the rubber stamp provided. The elector shall then fold his ballot in the manner provided and show it to the presiding officer who shall require the elector to immerse his finger in the electoral ink. When this is done the elector is allowed to insert his ballot paper into the ballot box. Rule 49 provides that if an elector, on the ground of physical incapacity or blindness, makes an application to the presiding officer to vote with the assistance of another person by whom he is accompanied, the elector shall be required to make an oath in the form provided. The elector's companion is also required to make a declaration in the prescribed form.

286. There are specific provisions in the Representation of the People Act designed to prevent corrupt practices by employees of the Commission. Section 60 of the Act provides that a registration officer is guilty of a corrupt practice if he enters in the register for a registration area, a registration record card for a person not entitled to be registered therein or if he, without reasonable excuse, omits from a unit register the registration record card of any person entitled to be registered therein. An election officer is guilty of a corrupt practice if he refuses to permit any physically incapacitated person to vote in the manner provided for or if he permits a person whom he has reasonable cause to believe is not entitled to vote, to vote at a polling station. Section 63 of the Act provides that an election officer who actively associates himself with the election campaign of any candidate or political party is liable on summary conviction to a fine of $1,500 and to imprisonment for six months. Section 64 prohibits any person from interfering with an elector when he is voting or from attempting to obtain information as to the candidate for whom the elector has voted. Every person attending proceedings in connection with the opening of special ballot papers shall maintain the secrecy of the voting. No person, having undertaken to assist a physically incapacitated elector to vote, shall communicate any information as to the candidate for whom that person has voted. Offences under section 64 are punishable on summary conviction by a fine of $750 or imprisonment for six months. Section 65 makes it an offence for a person to be knowingly registered in more than one unit register. Under section 96 a person is guilty of a corrupt practice if he gives money to an elector to induce that elector to vote or refrain from voting or who makes any gift or procurement to that person for this purpose.

A person is guilty of bribery if he advances or pays any money to any person with the intent that the money will be expended in bribery at an election. Under section 99 a person is guilty of personation if he commits the offence of personation, that is, voting as some other person who is either living, dead or fictitious.

Article 26

287. The right to equality of all men is recognized in the Preamble to the Constitution. Although there is no clause expressing a right to non-discrimination in the context of the law, section 4 (d) of the Constitution guarantees the right of an individual to equality of treatment from any public authority in the exercise of any function. Based on judicial interpretation, a breach of this right will occur if it is proved there has been mala fides on the part of a public authority, mal-administration of equal laws or a lack of even handedness vis-à-vis other persons in the treatment meted out by the authority to the aggrieved person. In L.J. Williams v. Smith [(1980) 32 WIR 395] monetary compensation was awarded when the Chief Immigration Officer was held to have acted in bad faith contrary to section 4 (d) in refusing to consider applications made by the plaintiff company for work permits for foreign nationals.

288. In a move to stamp out discrimination on the ground of race, colour, religion or sex, the Government has enacted new laws, including the Registration of Clubs Amendment Act (No. 14 of 1997) which empowers a Licensing Committee to strike from the Register of Clubs any club to which the public has access, if it is proved by any aggrieved person that the person was discriminated against on the ground of race, colour, religion or sex.

289. By Act No. 13 of 1997 the Liquor Licences Act, chapter 84:10 has been amended to prohibit discrimination on licensed premises on the ground of race, colour, religion or sex. Discrimination has been defined as inequality of treatment. Segregation of a person by place or position by reason of race, colour, religion or sex is deemed to be discrimination.

290. Similarly the Theatres and Dance Halls Act, chapter 21:03, has been amended to prohibit discrimination on the ground of race, colour, religion or sex, including refusal of admission or service or refusal of access to facilities on any licensed premises. The Licensing Authority is empowered to suspend or cancel a licence if it is satisfied that discrimination has occurred.

291. The present Government, recognizing that the Constitution only protects individuals from discrimination by the State and its agents, has caused the Law Commission to prepare a report on the introduction of equal opportunities legislation in Trinidad and Tobago. This report contains a review of the systems of other jurisdictions, including the United Kingdom, Canada, Australia and Hong Kong, as they relate to anti-discrimination legislation. It was felt that the constitutional provisions needed to be buttressed, particularly with respect to private actions. Based on the findings of the Commission, legislation has been drafted in the form of an equal opportunities bill, which has been tabled for debate in Parliament. The bill seeks to prohibit certain kinds of discrimination and to promote equality of opportunity between persons of different sex, colour, race, origin, religion, marital status or ability. It provides inter alia as follows:

(i) Clause 7: A person shall not otherwise than in private, do any act which:

Is reasonably likely, in the circumstances, to offend, insult, humiliate or intimidate another person or a group of persons;

Is done because of the gender, race, ethnicity, origin or religion of the other person or of some or all of the persons in the group; and

Is done with the intention of inciting gender, racial or religious hatred.

(ii) Clause 8: An employer shall not discriminate against a person:

In the arrangements he makes for the purpose of determining who should be offered employment;

In the terms or conditions on which employment is offered;

By refusing or deliberately omitting to offer employment.

(iii) Clause 9: An employer shall not discriminate against a person employed by him:

In the terms or conditions of employment that the employer affords the person;

In the way the employer affords the person access to opportunities for promotion, transfer or training or to any other benefit, facility or service associated with employment, or by refusing or deliberately omitting to afford the person access to them; or

By dismissing the person or subjecting the person to any other detriment.

(iv) Clause 15: (1) An educational establishment shall not discriminate against a person:

By refusing or failing to accept that person's application for admission as a student; or

In the terms and conditions on which it admits him as a student.

(2) An educational establishment shall not discriminate against a student:

By denying or limiting the student's access to any benefits, facilities, or services provided by the educational establishment; or

By expelling the student or subjecting the student to any other detriment.

(v) Clause 17: Any person concerned with the provision of goods, facilities and services to the public or a section of the public shall not discriminate against a person who seeks to obtain those goods, facilities and services:

By refusing to supply the goods, provide the facilities or perform the services;

In the terms on which he supplies the goods, provides the facilities or performs the services; or

In the manner in which he supplies the goods, provides the facilities or performs the services.

(vi) Clause 18: A person shall not discriminate against another person:

In the terms on which he offers the person accommodation;

By refusing an application of the other person for accommodation; or

By deferring an application for the other person or according to him a lower order of precedence on any list of applicants for that accommodation.

292. This bill, in clause 26, seeks to establish a body known as the Equal Opportunity Commission, which shall comprise five commissioners appointed by the President after consultation with the Prime Minister and the leader of the opposition. The functions of the Commission are inter alia, to work towards the elimination of discrimination; to promote equality of opportunity and good relations between persons of different status generally; and to receive, investigate and as far as possible, conciliate allegations of discrimination. Clause 39 provides that where the subject matter of a complaint cannot be resolved by conciliation and where the subject matter remains unresolved the Commission shall, with the consent and on behalf of the complainant, initiate proceedings before the Tribunal.

293. The bill, in clause 41, provides for the establishment of an Equal Opportunity Tribunal, which shall be a superior court of record. The Tribunal shall consist of a judge of status equal to that of a High Court judge, who shall be chairman, and two lay assessors as may be appointed. The bill provides further that any party to a matter before the Tribunal is entitled as of right to appeal to the Court of Appeal on the grounds set out in the bill. A decision of the Court of Appeal in respect of an appeal from an order or award of the Tribunal shall be final.

Article 27

294. Although there are some ethnic groups which form a minority in Trinidad and Tobago, discrimination against these groups is not permitted and in practice all the different minority groups co-exist peacefully and harmoniously. Constitutional rights are rights of all individuals within the jurisdiction, including aliens. The Constitution expressly declares that fundamental rights exist without discrimination by reason of race, origin, colour, religion or sex.

295. The Amerindians were the original inhabitants of Trinidad and Tobago. Although there are no Caribs of pure descent alive in the jurisdiction, the descendants of the Amerindians promote the preservation of the cultural traditions of their ancestors. The community comprises approximately 300 persons whose ancestors were Amerindians. The Santa Rosa Carib community is registered as a limited liability company whose main purpose is to preserve and maintain their traditions and to redevelop and recover their old Amerindian traditions. The Santa Rosa festival represents the zenith of such efforts. This is a month-long series of events orchestrated by the Carib community for both the parish and the wider community. This period begins with a key event held on 1 August every year: the blasting of the ceremonial cannon on Calvary Hill at 6 a.m. After the blasting of the cannon, the Carib community engages in the smoke ceremony. This is an indigenous ritual designed to praise the earth and the ancestors, the family and friends of the Caribs. This event is followed by a lunch consisting of Amerindian delicacies that is prepared for sale. Amerindian handicrafts are also put on sale.

296. In May 1990, under the then Government, the Cabinet formally recognized the Santa Rosa Carib Community as the sole legitimate representative of the only retained community of indigenous people in Trinidad and Tobago and awarded an annual subvention of TT$ 30,000 for the holding of the Santa Rosa Festival. The present Government continues this annual subvention. In 1992 and 1993, the then Government provided in excess of TT$ 250,000 for the two CARIFESTAs held in Trinidad in support of Arima's Carib community which acted as host to visiting Amerindian delegations from across the Caribbean. In 1993, the then President awarded the Carib community the National Award of the Chaconia Medal Silver for its efforts in culture and community service. The Arima Borough Council increased its annual subvention to the Carib community for the holding of the Santa Rosa Festival from $500 to $5,000 annually.

297. The Government, through the Ministry of Culture, provides financial and technical assistance to most cultural groups in the jurisdiction. For national holidays such as Eid, Divali, Emancipation Day and Baptist Liberation Day, large sums of money are donated to assist in celebrations. The Ministry is involved in the preservation of the heritage of Trinidad and Tobago and the perpetuation of cultural traditions.